INTERNATIONAL LAW

FOR STUDENTS

BY

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First edition] 1941 [Price Rs. 2
foreign 4 S.

Published by

K. K. BHATTACHARYA.

University of Allahabad.

Printed by

Sushil Chander Varma. B. Sc.

Saraswati Press: George Town, Allahabad.

TO THE MEMORY

OF

MY FATHER

PREFACE

My ex-students, and present students of the University of Allahabad studying International Law repeatedly asked me to publish the lectures which I delivered to them, as they thought them to be very useful. A few months ago even some practising lawyers, who were from other Universities, appearing at the Munsifship examination, while going through my lectures pressed me to bring out the lectures in a book form. Encouraged by them, I venture to publish this small book, which I hope will be useful to the students.

I am under a deep debt of obligation to such great authors and writers, as Pitt Cobbett, Hall, Lawrence, Wheaton, Keith, McNair, Oppenheim and to my teachers of International Law in the University of London, when I was an LL. M. student there, Dr. Smith and Dr. Lauterpacht. Pitt Cobbett's volumes "Cases on International Law" present to us indeed very useful information on all the topics. When read along with Oppenheim's, Lawrence's or Hall's International Law, the students will, I am sure, find no difficulty in successfully understanding all the topics on International Law. Advanced students must of course, supplement their studies by reading articles in the British Year Book of International Law,

Transactions of the Grotius Society and American Journal of International Law. It is however necessary that students must have some knowledge of European history. They must at any rate be well acquainted with European history of the last three centuries. Those who have not read European history are advised to study any short good book which will enable them to follow International Law easily.

I am very grateful to our Vice-Chancellor, Professor. Amar Nath Jha, M. A., F. R. S. L., a great patron of learning for the kind encouragement he has always given me.

I am thankful to Professor A. P. Dubey, B. C. L., (Oxon), Barrister-at-Law, Dean of the Faculty of Law, Allahabad University, and all my present and past students, of this University.

My thanks are due to Mr. Projesh Banerji, B. A., LL. B. for kindly going through the proofs with care; Mr. S. R. Verma, M. A., the proprietor of Saraswati Press as also to his son Mr. Sushil Chander Varma, B. Sc. for their very quick and diligent work.

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CONTENTS

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INTERNATIONAL LAW

For Students.

CHAPTER I

INTERNATIONAL LAW.

The Law of Nations or International Law has been defined by Prof. Brierly as "the body of rules and principles of action which are binding upon civilised states in their relations with one another."[1] Prof. Brierly observes that though the system of International Law is essentially modern, it had like the modern state itself, a mediaeval foundation.

In Rome, along with *jus civile* or original law peculiar to the country, a more liberal and progressive element, the *jus gentium* came into power, because it was believed to be of wide or universal application. This development was strengthened later on by the doctrine of *jus naturale* which meant in effect the sum of those principles which ought to control human conduct, "because they were founded in the very nature of man as rational and social being." "In course of time the *jus gentium*, the new progressive element which the practical genius of the Romans had imported into their actual law, and the *jus naturale*, came to be

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[1] *See*—Prof. Brierly's *The Law of Nations.*

regarded as synonymous.' The Law of Nature was held by people then as part of the Law of God which could be discovered by human reason as contradistinguished from that which is directly revealed. Naturally the *jus naturale* was regarded as more important than positive law and it was held by some writers that when they were in conflict with each other the *jus naturale* must prevail.

CRITICISMS OF JUS NATURALE—This theory implies belief in the rationality of the universe which is of course exaggerated. Secondly, if *jus naturale* be placed in that predominant position it naturally implies the unnaturalness of *jus* or positive law. Prof Brierly sums up the matter by saying, "For one thing the Law of Nature stands for the existence of *purpose* in law, reminding us that it is not a meaningless set of arbitrary principles to be mechanically applied by courts, but that it exists for certain ends, though those ends may be differently formulated in different times and places."

SHORTCOMINGS OF INTERNATIONAL LAW—Some maintain that International Law is not law proper but may be classified as a branch of ethics. But this is not correct, for if International Law is nothing but international morality, the whole of it is certainly not international morality. Furthermore, legal forms and methods are used in diplomatic controversies and in judicial and arbitration proceedings and authorities and precedents are cited in arguments, as a matter of course. Those who believe in International Law as international morality take their stand

upon the doctrine, like Hobbes and Austin, that *nothing is law which is not the will of a political superior.* But this is a misleading and inadequate description even of the Law of State. Prof. Oppenheim defines law as a "body of rules for human conduct within a community which by common consent of this community shall be enforced by an external power."

If the imperative character of International Law were equally strongly felt, the institution of definite international sanctions would easily follow. National Law in modern times is strong, whereas International Law is still a weak form of law. It does not justify us in denying the fundamental similarity of the two. To quote the exact words of Prof. Brierly on this point, "The difference is one of the stage of development which has been reached. International Law is law at an earlier stage than the Law of an well-ordered modern state. As Dr. Figgis pointed out, "The obedience which the state rendered to it, is probably more regular and less reluctant than was the obedience six centuries ago paid to the common law by any decently placed mediaeval feudatory."

International Law has some of the defects, no doubt, of customary law. Violations of the law are extremely rare in any customary law and they are so in International Law. The laws of peace are very much observed. The violation of International Law at the time of war need not be unduly laid stress on. To quote Prof. Brierly again, "The efforts of those

who seek to cure the defects of International Law merely by devising a better system of sanctions to secure its enforcement, are misdirected. It is not the existence of a police force that makes a system of law strong and respected, but the strength of law that causes a police force to be organised."

The weaknesses of International Law exhibit themselves in the inadequacy of the present law, in the smallness of its range, in the uncertainty of many of its rules and in the slowness of its development. There is no international legislature to keep the law abreast of new needs in international society; there is no international executive power to enforce International Law. International Courts of Justice are handicapped by the range of action, because, resort to them is not compulsory. Certain matters lie outside the range of International Law, for example, tariffs, bounties, and markets etc. Law can never play a really effective part unless it can annex to its own sphere some of the matters which lie within the domestic jurisdictions of several states.

The uncertainty of many of the rules of International Law is due to the fact that there is no authoritative law-declaring machinery. The difference between International Law and Law of the State is of degree, but not of kind and will tend to be diminished as the practice of resorting to International Courts, which are able to work out the detailed practical implication of general principles, becomes more common.

See—Prof. Brierly's *The Law of Nations, Shortcomings of International Law in* B. Y. I L (1924).

WHAT RIGHT HAS INTERNATIONAL LAW TO BE CALLED LAW ?—Dr. Lawrence defines International Law, "as the rules which determine the conduct of general body of civilised states in their mutual dealings." According to him therefore, the precepts of International Law are rules whether they are or are not laws. He puts it, "The rules, though like other rules they are sometimes evaded and sometimes defied, do nevertheless, receive general obedience. They are no more reduced to a nullity by being sometimes broken, than are the laws of the land, because some habitual criminal disregards them with impunity." These rules may therefore be termed laws, unless, of course, the Austinian definition of sovereignty and laws be accepted.

The Austinian view is that International Law is only a code of morality. Austin in his book on Jurisprudence laid it down that International Law rests on the sufferance of public opinion and cannot be called Law. Lord Salisbury once remarked, "It can be enforced by no tribunal and therefore, to apply to it the phrase law is to some extent misleading." The following are a few of the reasons for calling it law.—

(1) It is habitually treated by States as Law.

(2) Law connotes not only compulsion but also justice and uniformity. The Austinian theory is therefore inadequate.

(3) Legal method of developments by means of precedents and opinion is adopted.

(4) Parts of International Law are administered by Municipal Courts.

(5) International Law exists and is distinct from morality.

(6) International Law resembles primitive Municipal Law at a stage when self-help, with the general approval of community, is the normal sanction.

Prof. Brierly in his book, *The Law of Nations* says, "Questions of International Law are invariably treated as legal questions by those who conduct international business and by Courts before which they are brought" He goes on to say that when a breach of International Law is alleged by one party to the controversy the act is not defended by claiming the right of private judgement which would be the natural defence, if the issue was merely concerned with the morality of the act, but always by attempting to prove that no rule has been violated.

According to Prof. Austin who was the head of the analytical school, every law must be backed by the authority of the state and if that element be lacking it cannot be termed law. Tested in the light of this definition, therefore, International Law is no law. True it is that International Law, which is a body of rules, must differ in many respects from State Law or Municipal Law. As Pitt Cobbett in his book. "*Leading Cases on International Law* has put it, "As between States, which are independent and legally equal, there can be, of course, no common law-making body, having power to bind them by its decrees, nor is there a common tribunal except the Permanent Court of International Justice having authority to interpret and apply

law, between parties at variance, to compel resort to the tribunal and give effect to their judgments. For these reasons International Law is not only less imperative and less explicit than State Law, but it also lacks the coercive force of State Law. But nevertheless, it must rank more with law than with morality, for the rules it embodies are, in their nature, not optional but compulsive, resting in the last resort on force, even though that force is exerted through the irregular action of society than through some definite and authorized body, within the range of those legal, as distinct from political, relations." These rules are accepted as law by the States and are appealed to in that character by the contesting parties. Finally these rules have been elaborated by a course of legal reasoning and are applied in a legal manner.

Prof. Hall in his book on International Law says that International Law not merely operates as law, but is distinguished from International Morality by a radical difference, both in the nature of its rules and its sanctions. It is often ill-defined and sometimes powerful States violate it, but that does not appear to mark it off from State Law which is also violated. The defects of International Law as pointed out summarily by Prof. Brierly are :—

(1) There is no International Legislature to keep the law afresh of new needs in International Law.

(2) There is no International Sovereign power capable of enforcing the law.

The sources of strength, however, are as follows:-

(1) A regard, which in a moral community flickers but seldom dies, for national reputation as effected by International public opinion, is a treasured possession.

(2) An unwillingness to incur the risk of warfare, for any but a permanent national interest.

(3) The realization by each nation that the convenience of settled rules is chiefly purchased in the majority of cases by the habit of individual compliance.

SOURCES OF INTERNATIONAL LAW—According to Prof. Brierly custom and reason are the main sources of International Law. but according to others, custom and reason are not the only sources, the other sources being:-

(1) Works of great publicists.

(2) Treaties in which important principles of International Law have been laid down.

(3) Decisions of Prize Courts and International Tribunals.

(4) State papers other than treaties.

(5) State instructions for the guidance of tribunals and officers.

Article 38 of the Statute of the Permanent Court of International Justice states the sources as follows :—

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting states.

(b) International custom, as evidence of a general practice of law amongst the states.

(c) The general principles of law recognized by civilised nations.

(d) Judicial decisions and teachings of highly qualified publicists.

We must accept the definition laid down in the Statute of the Permanent Court of International Justice as correct.

TREATIES AS A SOURCE OF LAW—Only one special class of treaties can be regarded as a source of law and such treaties are those which a large number of states have concluded for the purposes of declaring what the law is on a particular subject, or of laying down a new general rule for future conduct or of creating some international institution. They are therefore regarded as law-making treaties.

CUSTOM AS A SOURCE OF LAW—Custom in its legal sense means something more than a mere habit or usage. It is a usage felt by those who follow it to be an obligatory one. In other words, there must be a feeling in those who observe a custom that a transgressor will probably or ought to feel evil consequences of the violation.

Article 38 shows that the alleged custom must be such as to evidence a general practice accepted in law. States sometimes put forward contentions for supporting a particular case. Therefore, in order to ascertain this question, particular importance must be attached to diplomatic correspondence, official instructions to diplomatic consuls, naval and military

commanders ; acts of state legislatures and decisions of state courts and opinions of law officers.

GENERAL PRINCIPLES OF LAW–General principles of law recognised by civilised nations have been also laid stress on in Art. 38. "It is an authoritative recognition of the dynamic relations of the International Law and of the creative functions of the courts which administer it" (Prof. Brierly).

JUDICIAL PRECEDENTS–Precedents are not binding, but they are entitled to great weight. The decisions of the Permanent Court of International Justice itself are entitled to immense weight and consideration.

TEXT-BOOK WRITERS—One of the services rendered by text-book writers is that they state what law is. In the leading case of Paquete Habana (1899, American Prize Case, 1938) Mr. Justice Grey states it thus:— "Resort must be had, as evidence of the custom and usages, to the works of jurists and commentators, who by years of labour, research and experience, have made themselves well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be but for trustworthy evidence of what the law really is."

It is also stated that the speculations of these text writers concerning the law what it ought to be are also useful for their writings may help to create opinions

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See—(1) Prof. Brierly—*The Law of Nations.*

(2) Pitt Cobbett—*Leading cases on International Law.*

(3) Dr. Lawrence—*International Law*

which may, later on, influence the conduct of the state and thus indirectly change or modify the actual law.

THE LEGAL FUNCTION—An international legislature does not exist, but such legislative function began to grow in consequence of several conferences. In the Congress of Paris (1814) was declared the principle of Freedom of Navigation in the international universe. The desire to mitigate the horrors of war gave rise to Geneva Conventions of 1864, 1906 and 1929 and the Hague Conventions of 1899 and 1907.

Conferences also have settled political questions which may be stated to be really legislative in character. The League of Nations also provides a source of international legislation, for Art. 19 of the Covenant empowers the Assembly of the League to advise reconsideration of the treaties. The Assembly furthermore acts as a conference at which conventions are drawn up.

CHAPTER II

STATES

THE DOCTRINE OF EQUALITY OF STATES—States are unequal in civilization, size, population, wealth and strength. They are not merely unequal politically, but they have also unequal rights in law e. g. there are states which are Protectorates. In the League of Nations also the five Great Powers possess greater power and influence, in as much as, they are given permanent seats in the Council of the League, though all stand on equal footing in the composition of the Assembly. Therefore equality of states does not mean that all states have equal rights in law. It only means that the rights of any one state are entitled to the same protection as the rights of another state. It merely denies that the weakness of a state does not afford any excuse for disregarding its legal rights.

The doctrine of legal equality of States involves the following consequences:—

(1) In matters legally requiring the consent of the Family of Nations every Sovereign State has got one vote.

(2) No Sovereign can be tried in the court of another Sovereign. (Mighell v. Sultan of Jehore; Duff v. Government of Kelantan. (1924) A. C. 797).

(3) Public ships, (whether war-ships or not) of a Sovereign State cannot be sued in the Court of another State. (The Parlement Belge ; The Schooner "Exchange" v. Mcfadden)

(4) It is not competent for one Sovereign State to question the validity of an official act of another Sovereign State whose government has been recognised by the former state.

WHAT ARE THE HALL-MARKS OF STATEHOOD ?— The hall-marks of statehood can be stated as follows:-

(1) Independent exercise of authority over the inhabitants of the territory in question, in the matter of government and taxation.

(2) The maintenance of separate military and naval forces.

(3) The possession of separate flag, and capacity of entering into treaties with other powers.

(4) The possession of an independent right to make peace and war.

(5) Its recognition by other states which may be either express or implied.

Recognition is one of the modes of putting the seal of approval upon the existence of a state It is through recognition only and exclusively, as Oppenheim says, that a state becomes an international person and a subject of International Law.

But there are difficulties in this view. The status of States recognised by one state and not recognised by another state is indeed an anomaly. Therefore, even before recognition, states may be deemed to

have a legal existence. (See on this point, Jaffe—*Judicial Aspect of Foreign Relations*, p. 98).

It may be stated therefore that the granting of recognition is a political rather than a legal act. Prof. Brierly has put the matter thus, "The primary function of recognition is formally to acknowledge as a fact something which has hitherto been uncertain, viz., the independence of the state recognised and to declare the recognising of the state's readiness to accept the normal consequences of that act, i. e., the usual courtesies of international intercourse." But in practice and more specially in recent years, non-recognition does not always imply that the existence of an unrecognised state is a matter of doubt.

SOVEREIGN STATES—A Sovereign State is one which while possessing the attributes of statehood is also independent of external control. A semi-sovereign state is one, which notwithstanding the possession of attributes of statehood, is not free in its external relations.

We have now to consider as to what does the independence of state-supremacy mean ? In its internal aspect it means that the state has got absolute right to determine its course of action within its own territorial jurisdiction; and in its external sphere it means that the state has got unhampered liberty so far as intercourse with other states is concerned. Independence of the State, therefore, means the right of a state to manage all its affairs, external or internal, without control from other

States. But numerous kinds of restrictions may exist without impairing or destroying independence.

A Sovereign State may be deemed as bound together by the ties of common subjection to some central authority whose commands the bulk of its people obey.

The central authority may be vested in an individual or in a body of indviduals. There are two characteristics of a Sovereign State:—

(1) Its Government must receive habitual obedience from the bulk of the people.

(2) It must not render any habitual obedience to any earthly superior.

PART-SOVEREIGN STATES—When a political community is obliged to submit itself to the will of another political community in some matters of external importance or to the control of some other states, it is, in a condition of part-sovereignty for international purposes.

In deciding whether a State is sovereign, semi-sovereign or non-sovereign one must take note of the determining functions, e. g., the possession of its own national flag, the recognition of a treaty-making power, as also the capacity of remaining neutral in case there is a war between two states.

STATES SUBJECT TO SUZERAINTY—There are states which possess no international capacity; the Indian states of India, which are unable to have any foreign relations are an instance of this kind of states.

Next is the instance of Bulgaria from 1878 to 1908. By the Treaty of Berlin (1878) Bulgaria was established as an autonomous tributary principality under Turkey. Payment of tribute and contribution to Turkey was at first insisted on, but on 5th October 1908, Prince Ferdinand was proclaimed Czar of Bulgaria, and she then assumed the position of an independent State.

CLIENT STATE AND PROTECTORATE—A protectorate surrenders to the protecting state the right over foreign affairs, sometimes wholly and sometimes partially, but generally speaking the total surrender of right of international affairs will bring the state under the denomination of client state.

Protected states are those that have either on their own initiative or through some arrangement been placed under the protection of some other Power. But it should be noted that a State in protection does not *ipso facto* lose its sovereignty. Illustration may be given of the treaty of 1907 concluded between Great Britain, France and Germany, by which the independence of Norway was guaranteed. But this did not impair the Sovereignty of Norway.

The Republic of Cuba, whose independence was recognised by the U. S. A. on condition that Cuba abstained from all direct relations with all other States, is a protectorate of that power. From the standpoint of International Law, Protected States are not regarded as International Persons. But confusion should not be made that simply because a nation's independence is guaranteed by some other

power or powers, that nation has ceased to be a Sovereign Nation. All the facts and circumstances have got to be carefully analysed in order to come to a conclusion whether a state whose independence is guaranteed has still retained a sovereign character or has become a protectorate of the guaranteeing power or powers.

MANDATORY STATES—Article 22 of the Covenant of the League of Nations is the corner-stone on which has been built up the mandate system. This system was devised during 1919 as a substitute for annexation of the territories which the allies had conquered from Germany and Turkey during the Great War. Since the Great War a number of territories have ceased to be under the sovereignty of states to whom they previously belonged. Article 22 of the League of Nations has placed a number of territories under the guardianship of the League, which is to give a mandate to such states comprising the League as by reason of their resources, experience or geographical position, are most suitable to take charge of such territories and administer them on behalf of the League. Thus Great Britain has been given Mesopotamia and Palestine, France has been given Syria and Belgium, German East Africa.

The Mandated territories are alleged to be inhabited by backward communities. Hence the League of Nations found it necessary that these territories must be handed over to certain powers, on its behalf, as a sacred trust of civilisation. The mandate, however, is not legally a form of annexation. A man-

datory power is governed by the terms of the mandate and no annexation or cession may be effected without the consent of the Council of the League. Furthermore there is a clause attached to each mandate that it cannot be modified without the consent of the Council of the League.

Mandated states are divided into several classes but the exact position of these states has not been defined, either by the Covenant of the League of Nations or by International lawyers. The result, therefore, is that politicians have at different times put different interpretations upon the external and the internal sovereignty of these territories. It has not yet been decided finally in whom the internal and external sovereignty resides. To the question, 'Does it reside in the League of Nations ?' a negative answer has been given. So by a process of elimination the legitimate conclusion one can come to is, that the sovereignty resides in the states who hold such territories. The uncertain nature of the position of these territories is causing unrest in the minds of their people. Furthermore, the states to whom these territories belonged before the war, hold that they should be returned to them. The mystical nature of the mandate in these territories has been a puzzle to all International lawyers.

There are communities that have reached a fairly advanced stage of development, and the Mandatory power merely offers them administrative advice and assistance. Iraq, Palestine and Trans-Jordinia belonging to Great Britain and Syria and Lebanon belonging to

France, are examples of this type of Mandated territories. Iraq has been made a member of the League since 1932 and can no longer be regarded as a mandated area.

Stating his views on Palestine Mandate, Lord Balfour, in 1922, discussed their origin in general and said, "The public mind might have misunderstood the powers of the League of Nations and its Council regarding the mandates. The mandates were not the creation of the League and they could not in substance be altered by the League, whose duties were confined to seeing that the specific and detailed terms of the mandates were in accordance with the decision taken by the allied and the associated powers.....that in carrying out these mandates, the mandatory power should be under the supervision, not under the control of the League.".....

"A Mandate was a self-imposed limitation..... by the conquerors on the sovereignty which they exercised over the conquered territory."

"In the general interest of mankind, the allied and the associated powers, had imposed this limitation upon themselves and had asked the League to assist them, in seeing that the general policy was carried out; but the League was not the author of the mandatory system."

"The duty of the League was first to see that the terms of the mandates were in conformity with the principles of the Covenant and secondly that these terms would in fact regulate the policy of the mandatory power in the mandated territories."

ILLUSTRATIVE CASES—In the case of Mainka v. the Custodian of Expropriated Property (1924, 34, C. L. R, 297), it was held that the English Court of Appeal had jurisdiction over cases tried in the Mandated territory of New Guinea.

In R. v. Christian (1924, S A. L. R, (A. D.) 101) an inhabitant of S. W. Africa, a Mandated territory, Christian was convicted of treason by the court. It was contended on his behalf that since he owed no allegiance to the King of England, the charge of treason was not sustainable. This contention was overruled as the court held that against the state which possessed international sovereignty, even though its external powers be restricted, a charge of treason can be maintained.

The conclusion which follows from these points leads to the fact that for all practical purposes a mandated territory is regarded part and parcel of the mandated power.

The Council of the League requested the Mandates Commission in 1930 to lay down conditions according to which a mandated territory would cease to be such. The Commission laid down the following conditions:—

(1) The territory must have a settled government, i. e. an administration capable of maintaining regular operations of essential government services.

(2) It must be capable of maintaining its territorial integrity and political independence.

(3) It must be able to maintain public peace throughout the territory.

(4) It must have adequate financial resources.

(5) It must possess laws and have a competent judicial organisation.

(6) Such a state must guarantee effective protection to racial, linguistic and religious minorities.

(7) Other guarantees related to the protection of foreigners. and the immunities which they could enjoy.

UNION OF STATES—There are at present not only single-territory states but also states which rule over very large and differently constituted territories. Such states are usually a union of several states. There are several kinds of such unions of which the following deserve mention.

PERSONAL UNION—A Personal Union occurs where two or more states, otherwise distinct, are ruled by the same sovereign. Mention may be made of Great Britain and Hanover from 1714 to 1837, and of Belgium and Congo Free State from 1885-1909. But regarded from the point of view of International Law, England and Hanover were distinct Persons.

REAL UNION—A Union is Real where two or more states are permanently united under one dynasty or government so as to constitute one state for all external purposes, but each retaining its distinctness in the matters of dynastic concern. Such a form of union existed between Austria and Hungary and between Sweden and Norway. The united body constituted one International Person.

FEDERAL UNION—A Federal Union occurs when there is the union of several states or communities

each of which is distinct and united by a permanent compact in such a manner that the ordinary powers of sovereignty are in part vested in a Federal or National Government, whose authority extends over the whole union. The U.S.A. is an example of Federal Union and constitutes one International Person.

CONFEDERATED UNION—As distinct from the Federal Union, it is the amalgamation of several distinct states, the reigning heads of which retain their position as sovereigns. In its actual working the Union approximates to the Federal type, but the sovereignty or international personality of these states is in no way impaired. The German Empire under the constitution of 1871 was a confedrated Union.

PROTECTORATES—The protecting state controls generally all the foreign affairs of the protected state and ensures to it freedom from invasion. The degree of control over foreign affairs of a protected state may vary. In certain cases the protecting state does not merely control the foreign relations but also the internal relations of the protected states. The exercise of such influence by Great Britain over the Ionian Islands from 1815 to 1863 is an example in point.

SPHERES OF INFLUENCE—A sphere of influence according to Hall "...indicates the regions which are geographically adjacent to or have been politically grouped with possessions or protectorates of a Great Power but which have not yet been actually so reduced into control that the minimum powers, which

are implied in a protectorate, can be exercised towards them with tolerable regularity." Spheres of influence may later on become colonial protectorates.

Non-contracting powers are not bound, by agreements between the contracting powers, to treat a certain tract of land as a sphere of influence. In this connection it may be noted that Great Britain and France entered into agreements with regard to certain African territories and similar arrangements were made between Germany and Portugal also.

CONDOMINIUM—This expression means that a territory may sometimes be under the joint sovereignty of two or more powers. By the Convention of 1899, Sudan was made subject to the Condominium of Great Britain and Egypt.

CONFEDERATIONS are composite states and which may be either :—

A *Bundesstaat*, where each state controls its own internal affairs but in regard to external relations all of them act as one unit. Each state is thus its own master in internal affairs and the composite state as a whole forming a Budesstaat is in charge of external relations.

In a *Staatenbund*, each state has got control over a few but not over all the foreign affairs relating to that state. In regard to internal affairs in a state, however, each state has got absolute control.

In the words of Dr. Lawrence, "A *Bundesstaat* comprises those unions in which the central authority alone can deal with foreign powers and settle external

affairs, the various members having control over their internal affairs only." In the second, called a *Staatenbund* are included all groups where the states that have agreed to unite have retained for themselves the power of dealing directly with other states in certain matters, the remaining external affairs being reserved by the federal bond to the central authority."

The United States of America and Switzerland fall under the first category while the German Confederation from 1815 to 1866 falls under the second category.

THE TERRITORIES OF STATES—Each state occupies a definite part on the surface of the earth, within which, unless limited by International Law, it exercises jurisdiction over persons and things. This is called the state's Sovereignty over the territory. A state's territory is "the space within which that state and no other state exercises its supreme authority." Such territories comprise—

Maritime Belt or that part of the sea which is under the sway of the littoral state. The littoral states have sovereignty and property and not mere right of control over the district bordering the coast. Three miles breadth measured from the low water-mark is the recognised Maritime Belt

The littoral extent of a country is the length of its coast-line. When we speak of the littoral zone, we usually mean the belt between high and low water-marks. The open sea cannot be appropriated. It should be remembered that the doctrine of the freedom of the sea is subject to the restrictions, that

(i) The littoral or the marginal sea extends up to three miles from the low water-mark.

(ii) The straits are not exceeding three miles in breadth,

and (iii) The Inland seas are not covered by it.

Rivers—There are four classes of rivers, (i) purely national e. g., the Thames from which all foreign vessels can be excluded, (ii) boundary rivers which separate two or more states, (iii) rivers which run through two or more states, and (iv) rivers internationalised by treaties. In regard to rivers which fall under the second and third categories foreign vessels may be excluded from that portion of the river which flows through a state.

Lakes are wholly territorial when entirely surrounded by the land of one state.

Straits, if they do not exceed three miles in width, are also deemed to be purely territorial, provided that the land on both sides belongs to the same state. But if such land belongs to different states the straits are to be divided between them. If, however, they are more than six miles in width the rules are more complicated. (See *the Bosphorus and the Dardenelles Regulations).*

Canals running through the territory of one state are to be deemed purely territorial unless there are treaties to the contrary. (See *Regulations relating to the Suez, the Panama, and the Kiel canals).*

Gulfs and bays, if enclosed by land of one state and if they do not exceed six miles in width at

the entrance, are to be deemed territotial waters. If, however, the entrance exceeds six miles in width and the width cannot be controlled by coast batteries, they are not deemed to be territorial.

The Air—By the Aerial Navigation Convention of 1919, a state has got complete sovereignty in the air columns over its land and territorial waters; but there is freedom of innocent passage for aircraft belonging to foreign states, provided that certain regulations are complied with.

State Servitudes are rights granted by one state to another, which accord to the grantee state a right of user over the grantor state's territory or impose upon the grantor state a certain restraint in favour of the grantee state. State servitudes cannot be, as a general rule, extinguished if the territory is ceded to or annexed by some other state.

It must be remembered that such a servitude involves the express grant of a sovereign right. In the North American Coast Fisheries Arbitration case it was held that the liberties of fishery granted to the United States did not constitute an interantional servitude in favour of the United States over the territory of Great Britain and did not thus involve a derogation from the sovereignty of Great Britain.

JURISDICTION OVER THE AIR—In the Paris Conference, in 1910, Great Britian advanced the view that a state is sovereign over the air above its territory, while France stood for freedom of the air. On account of the diametrically opposite views of these two great powers, the Conference failed to record an

agreement. As a result of the Convention of the Air Navigation signed in Paris in 1919, by a large number of states, it is now a settled law that every state has got complete sovereignty over the air, and other states have only such rights as can flow to them by treaties.

This Convention which affirmed the principle of Sovereignty of the air to the territorial state, however provides that there would be freedom of innocent air-passge over the territory of the contracting states. A state may, however, exclude *prohibited areas,* meaning thereby areas reserved to the state for military and strategic reasons, and no flight can be allowed over such prohibited areas. Every aircraft must be fortified with a certificate of air-worthiness issued by the state whose nationality it possesses, and the other members must also be provided with certificates of fitness to fly. But this convention will not be in operation in case of war, when the contracting parties are either engaged as belligerents or neutrals. Many states have ratified this convention.

JURISDICTION OVER ALIENS—It is an admitted principle that no state is legally bound to admit aliens into its territory, but if it does so, it must observe a certain standard of decent behaviour towards them, and their own state may demand a reparation for any injury caused to them by a failure to observe the standard.

MODES OF ACQUISITION OF TERRITORY—The following are the modes of acquisition of territory followed generally by states:—

Cession means the transfer of sovereignty over a State territory by the owner state to another state.

Occupation is appropriation by one state of territory not belonging to any civilized state. It is an Act of State done by the authority of the occupying state.

Two elements are necessary to constitute occupation. (a) *Appropriation* is a formal act which manifests an intention on the part of the occupying state to retain the territory of the other state. Hoisting of flag is done with this end in view. (b) *Settlement* is the establishment of a sort of control by one state over the other. The first element confers an inchoate title on the occupying state.

In the Berlin Conference an agreement was made by the Great Powers including United States of America, where-in, the principle was laid down that occupation must be effected by recognising the obligation to insure the establishment of authority in the region occupied by them on the coasts of African continent, sufficient to protect existing rights and freedom of trade and transit, as the case may be, under conditions agreed upon.

Prescription Writers have agreed that title may be acquired by lapse of time. No definite period has been fixed, as yet but in the Treaty of Washington (1897) the principle was laid down that "Adverse holding of prescription, during a period of fifty years, shall make a good title."

Accretion means the addition of new land to the existing territory of a state by the action of water.

Conquest is used synonymously with occupation by a number of writers. In that case, the possession of the occupant is only *de facto* and provisional. If the conquest is identified with subjugation and annexation, then the possession or annexation becomes *de jure.*

Title by conquest is applicable when a foreign territory has been effectively occupied during war-time and retained even when the war has terminated, without, however, any treaty confirming the said title.

Article 10 of the Covenant of the League of Nations condemns territorial acquisition by means of conquest.

Subjugation means military conquest followed by annexation.

CHAPTER III

INTERVENTION

According to a number of authors "*Intervention*" is not justified as it is tantamount to an attack upon the independence of a state. Others hold that it is not a right belonging to states, but is equivalent to a summary proceedure which is not strictly speaking lawful.

Hall observes that the right of independence is a right possessed by a state to exercise its will, without interference on the part of other foreign states, in all matters and upon all occasions, with reference to which it acts as an independent community. Tested in the light of this definition intervention cannot be strictly justified.

Intervention takes place when a state interferes in the relations of other states without the consent of either of them or when it interferes in the domestic affairs of another state, regardless of the will of other states, for the purpose of *either maintaining or altering the actual condition of things.* Strictly speaking intervention constitutes an attack upon the independence of the state subjected to it. The word Intervention is of recent origin.

ITS DISTINCTION FROM WAR—Hall explains that it lies not in the acts of the parties but in the

intervention of one of them. The intervener, notwithstanding the hostile character of the conduct and its recognition as such by the state affected, usually regards pacific relations as uninterrupted.

PUNITIVE INTERVENTION is a measure of redress, of political grievances by one state against another, which does not actually constitute or contemplate a state of war between the two states. The following examples will illustrate the point.

France established a blockade in 1838 of the coast of Buenos Aires, on the alleged ground that two of her subjects had been unjustly treated and that six others had been compelled to serve in the native army. She instituted a blockade of Mexico on the same ground. Naval expeditions were also sent by France against Korea in 1866 to redress the murder of the French missionary and by America for the destruction of an American vessel and the massacre of its crew.

EXTERNAL INTERVENTION—External Intervention is the interference by one state in the relations of two or more states without the consent of both or either of them.

Dr. Winfield, in the *British Year Book of International Law* of 1924, observes that the proper definition of Intervention has not yet been furnished. At the beginning of his essay he divides Intervention into three classes—*Internal* where it consists of interference between disputant sections of the community in another state; *Punitive*, where it is a measure of redress falling short of war and *External* where one state interferes in the relations of two or more states

without the consent of all or any of them. He further points out that there is no real difference between war and external belligerent intervention. Further, as Punitive Intervention is only a mode of redress falling short of war for some alleged international wrongs, the grounds advanced for its justification are co-extensive with all possible breaches of International Law. As regards the grounds justifying intervention he advances—

(i) Self-preservation as the primary doctrine;

(ii) Checking illegal intervention,

(iii) Intervention in accordance with treaty rights, and (iv) Authority to enforce universally recognized rules of International Law.

What is meant by *Self-preservation* has been unfortunately left to the caprice of each individual state. The observations of Professor Hall are, however, worth quoting. "If a government is too weak to prevent actual attacks upon a neighbour by its subjects, if it foments revolution abroad, or if it threatens hostilities which may be averted by its overthrow, a menaced state may adopt such measures as are necessary to obtain substantial guarantees for its own safety."

Different forms of the same conception are self-defence and necessity. According to Prof. Hall, "Intervention to prevent internal changes in a state from prejudicing rights of succession or of feudal superiority, fall under the right of self-preservation.

The theory of Balance of Power is often advanced in connection with Intervention and Self-preservation

Where it is relevant intervention, it is only a justification of External Intervention.

Intervention to check illegal intervention—This second ground is proper if it is directed at checking an illegal intervention. An example of this kind of Intervention was the help given by Great Britain to Portugal in 1826.

Intervention in accordance with treaty rights—This kind of intervention has been justified by publicists. In certain treaties provisions are inserted giving certain powers to intervene under certain circumstances.

Unsound grounds of Justification—The two grounds on which there were many interventions were nationality and religion. Both these grounds are, however, bad and have been criticised by International lawyers.

Alleged grounds of Justification—The most conspicuous among these grounds of justification in regard to which international practice is uncertain are *Humanity* and *Collective Intervention*. On these grounds it is now agreed that intervention is justifiable. If a state ignores the Laws of War or of Humanity so completely as to degrade itself to the position of a barbarous country, any civlized state is entitled to put a stop to the malpractices in the name of humanity. As regards Collective Intervention, it has been said that less odium is attached to it than to Individual Intervention.

Intervention against an immoral act—Lawrence says, "An intervention, to put a stop to barbarous and abominable cruelty, is a question of policy rather than of Law.....When in 1860 the Great Powers of Europe intervened to put a stop to the persecution and

massacre of Christians in the district of Mount Lebanon, their proceedings were worthy of commendation, though they could not be brought within the strict letter of the law."*

Intervention in order to preserve the balance of power was regarded as just from the middle of the 17th century but it is no longer regarded so now. Lawrence complains that, "If would-be plunderers could agree beforehand on a division of the spoil, and contrive to silence the objections of less interested neighbours, their victim would not be saved by any regard for a balance of power, which remains unaffected by the transaction."

Concluding the subject of Intervention Dr. Lawrence holds that the states should intervene very sparingly and only on the clearest grounds of justice and necessity and when they do intervene, they should make it clear that their voice must be attended to and their wishes carried out.

MONROE DOCTRINE—In 1823, President Monroe embodied his famous doctrine in his annual message to the Congress. It contained two distinct statements.

"As a principle, in which the rights and interests of the United States are involved, it declared that "the American Countries, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for colonisation of any European power."

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*See particularly *Dr. Winfield's article on Intervention*, B. Y. I. L. 1923 *and* 1924.

"With the existing colonies and dependencies of any European power we have not interfered and we shall not interfere; but with the governments who have declared independence and maintained it and whose independence we have, on great consideration and just principles acknowledged, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny, by European powers, in any other light than as the manifestation of an unfriendly disposition towards the United States."

Jefferson, in a letter written to Monroe, on 24th. Oct. 1823, said, "Our first maxim should be, never to entangle ourselves in the broils of Europe; our second never to suffer Europe to intermeddle in Cis-Atlantic affairs."

President Grant in 1870 stated that "in future no territory on the American Continent would be liable to transfer to any European power." In 1895 in his message to the Congress, President Cleveland stated "the doctrine, may not have been admitted in so many words in the code of International Law, but in International Councils a nation is entitled to the rights belonging to it. If the enforcement of the Monroe doctrine is something, we may justly claim, it has its place in the code of International Law, as certainly and surely, as if it were specifically mentioned."

In the dispute between Venezuela and Great Britain in 1896, with regard to the boundary between Venezuela and British Guiana, the British Government sent an ultimatum to the Government of Venezuela.

President Cleveland stated at the time, "If a European power, by an extension of its boundaries, takes possession of the territory of our neighbouring republic, against its will and in derogation of its rights, it is difficult to see why to that extent such European power does not thereby attempt to extend its system of government to that portion of our continent which is thus taken.....The dispute has reached such a stage as to make it now incumbent upon the United States to determine, with sufficient certainty for its justification, what is a true divisional line between the republic of Venezuela and British Guiana. I suggest that Congress shall make an adequate appropriation for the expenses of a commission to be appointed by the executive, which shall make the necessary investigation and report.....When such report is made and accepted, it will, in my opinion, be the duty of the United States to resist, by every means in its power, as a wilful aggression upon its rights and interests, the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory, which after investigation, we have determined, of right, to belong to Venezuela."

The matter was settled by arbitration in 1899.

In 1901 Great Britain, Germany and Italy brought pressure upon Venezuela to carry out her international obligations. President Roosevelt in his message to the Congress on 3rd. Dec, 1901 stated, "We do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of acquisition of territory by any non-American power."

In 1912, the American Senate passed a resolution, moved by Mr. Lodge, in the matter of Magdalena Bay, to this effect, "When any harbour or other place in the American Continent is so situated that the occupation thereof for naval or military purposes might threaten the communications of safety of the United States, the Government of the United States could not see without great concern the possession of such harbour or other place, by any corporation or association, which has such a relation to another government, not American, as to give that Government practical power of control for national purposes."

President Wilson on October 27, 1913 in protesting against concessions which Cólombia proposed to make to a British syndicate categorically stated that "The South Americon States must stop making such concessions, for if they were granted, foreign interests might dominate the internal affairs of the State granting them. As a result of the speech, possibly the negotiations failed.

In September, 1919, President Wilson asserted that the United States means to play big brother to the Western Hemisphere in any circumstances where it thinks it wise to play big brother.

During the last world war, Ecuador and Colombia disregarded their neutrality by permitting Germany to use their wireless stations. Great Britain and France made representations to the Government of U. S. A. with regard to the violation of neutrality on the part of these two republics. This act amounted to the acceptance of Monroe doctrine by the two great European powers.

Article 21 of the Covenant of the League of Nations lays down, "Nothing in the Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings, like the Monroe doctrine, for securing the maintenance of peace."

Thus the Monroe doctrine has, what may be stated, an international character. According to Prof. Fenwick, in his book on *International Law*, Monroe doctrine cannot be definitely determined so long as the United States is not a member of the League. Furthermore, how far this article can be reconciled with Articles 10, 11 and 16 cannot be also definitely stated. When the United States becomes a member of the League, then according to him, possibly a definite answer will be forthcoming.

The Monroe doctrine rests primarily on the law of self-preservation. Prof. Higgins (in B. Y. I. L. 1924) speaking about the Monroe doctrine, says—"This doctrine is the enunciation of a principle of policy and not an obligation of International Law." It sums up the traditional policy of the United States for the past century that there shall be no intervention or domination of any non-American state in, nor any attempt to extend the European system to, any portion of the Western Hemisphere.

It should be borne in mind that this doctrine has not been embodied in the Statute Law of the United States and it is not therefore legally binding on any government; yet by repeated assertions of this doctrine the American countries have been preserved

from any attempts on the part of non-American powers to acquire forcible possession of any part of their territories or to introduce political schemes of European statesman.

In 1923, Mr. Hughes of America, speaking on behalf of the United States Government, pointed out that the Monroe doctrine does not, by any means, make an inroad upon the Sovereignty of other American States, who have chosen to become members of the League of Nations and who rely upon the Covenant of the League of Nations.

DRAGO DOCTRINE—In this connection it is of importance to consider the Drago doctrine. In 1902 the foreign Secretary of the Argentine Republic, Mr. Drago, at the time when Venezuela was being practically blockaded by the combined fleets of Great Britain, Germany and Italy, with a view to enforce contractual and other claims against that country, formulated, what is since known as the Drago doctrine. It lays down that "A public debt cannot give rise to the right of intervention, and much less to the occupation of the soil of any American nation by any European power." The view was incorporated in the Hague Convention of 1907, but armed intervention in such cases, however, would apply, when the debtor's state either refused arbitration or refused to abide by the arbitration award.

CHAPTER IV

EXTRADITION

Extradition means the surrender by one state to another of an individual who is found within the territory of the former, and is accused of having committed a crime within the territory of the latter; or who having committed a crime outside the territory of the latter is one of its subjects and as such, by its Law, amenable to its jurisdiction.* Such surrenders are made in pursuance of treaty obligations, though cases are not wanting where a criminal has been given up in the absence of any such stipulation.

CONDITIONS PRECEDENT TO THE SURRENDER OF A CRIMINAL:—The following conditions are to be satisfied before a criminal of a state can be surrendered

(1) Reasonable *prima facie* evidence of guilt.

(2) Assurance that the individual demanded shall not be tried for any offence committed prior to his surrender, other than the extradition crime, until he has been liberated and has the opportunity of leaving the country.

(3) Political offenders are not to be surrendered.

(4) The crime must be an offence in both the states.

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*Lawrences's definition.

WHAT IS A POLITICAL OFFENCE ?—Pitt Cobbett says, "It would be useless to attempt a definition of what constitutes a political offence for the purpose of extradition. The best method is to leave the determination of the question to higher courts of each state, with power to decide each case as it arises and in the light of special circumstances attending it."

In the case of Castioni, (1891, IQ. B. D. 149) it was held that crimes, otherwise extraditable, become political offences if they are incidental to and form part of a political disturbance, to afford a sufficient justification to a state to surrender a political offender. Justice Hawkins, however, took occasion to say that any act done in the course of a political necessity was not necessarily of a political character, e. g., when a man deliberately and as a matter of private revenge, shot an unoffiending man, he would be guilty of an offence which would not amount to an offence of a political character. The murder of the head of a foreign state or of a monarch or of a member of his family shall not be considered a political offence.

In the subsequent case of Meunier, (1394, 2Q. B. 415) who was an anarchist and was proved to have caused two explosions in a Paris cafe *(Pitt-Cobbett's book Vol. I p. 247)*. it was held that in order to constitute a political offence there must be two or more parties in the state, each seeking to impose the government of its choice on the other and that if an offence were committed by one side or the other in pursuance of that object, then it would be regarded as having a political character, otherwise not. As an anarchist

Meunier was opposed to all governments and his anarchical efforts were directed against the general body of citizens.

There is a wide gap between these views. According to Lawrence, "The doctrine that an offence is political when it is part and parcel of a conflict between two parties for the control of the government, differs materially from the doctrine that no offence is political unless it is committed in the course of such a conflict. The latter not only deprives anarchists and enemies of the society of the protection of the rule that political offenders are not to be surrendered but it renders extraditable all offences committed by solitary patriots or small groups, with a view, as Prof. Westlake points out "to rousing their countrymen and initiating a movement against the authorities"

In the case of the U. S. A. versus Rauscher, it was decided that a person who has been surrendered for one offence should not be tried for another, during the continuance of the extradition proceedings. There is an interesting point on the subject of Extradition in the case of Mr. Savarkar, who was charged with murder in connection with a political movement, and escaped from a British ship when she touched Marseilles. The French Police arrested him while he escaped ashore and he was brought back to the ship and handed over to the captain. The French Government claimed that he should be returned to France as proper extradition proceedings should have been gone through before the captain was entitled to

have him back. The case was referred to the Hague Tribunal which decided in favour of Great Britain.

Though the Hague Tribunal gave this decision in favour of Great Britain, the judgment has raised a veritable hornet's nest, in as much as, International lawyers of repute had no hesitation in coming to the conclusion that the contention of the French Government was quite legitimate and should have been given effect to.

COMPETING CLAIMS—According to the opinion of certain writers a demand for extradition may be made not only by the state, in whose territory the offence was committed but also by a state claiming personal jurisdiction over the alleged offender by reason of his nationality. But it is settled in International Law that between competing claims, preference should be given to territorial claims, while, as between claims equally well-founded, preference should be given to the claim which involves the graver offence or in case of doubt, to the claim which ranks first in order of time.

CHAPTER V

STATE SUCCESSION

When one state succeeds another State, *de facto*, it succeeds to all the public and proprietory rights of the extinct state. The new state becomes liable for all local debts and contractual obligations. (Contracts) The succeeding state, however, is under no liability for the wrongful actions of the extinct state. (Torts)

POLITICAL RIGHTS AND DUTIES:—No succession takes place, with regard to the rights and duties of the extinct state, arising either from the character of the latter as an International person or from its political treaties. Treaties of alliance or arbitration all fall to the ground. It should, however, be borne in mind that in regard to local rights and duties, succession does take place. and as regards treaties, locally connected, they survive extinction of the state.

BROWNE'S CASE—The war between Great Britain and the two Republics in South Africa broke out before the Government of U. S. A. had made any representations on Browne's behalf. The Government of U.S.A. asserted that, in as much as, Great Britain has acquired the territory of South African Republics by conquest, the responsibility for wrongful acts by the former government, passes to the state annexing the territory. Tested in the light of this principle the Government of Great Britain was responsible for

making reparation to Mr. Browne, an American citizen, who had been injured in his rights by the Government of the Republics in South Africa before its conquest by the British. The British Government held a consultation, amongst an important body of publicists and statesmen who asserted that the principle enunciated by U. S. A. was wrong. They held that from the point of view of International Law, the liability for the torts of the government of a former state does not pass to a state conquering and annexing its territory and this view was given effect to.

After the annexation of Burma many foreigners preferred claims against the British Government in respect of the injuries they had received at the hands of the former Burmese Government. The British Government, after careful consideration of the claims, came to the conclusion that the contentions could not be sustained according to the principle enunciated in Browne's case.

In the case, known as West-Rand Gold Mine Co. Ltd. v. Rex, the court held that there was no principle of International law by which the conquering state becomes liable, in the absence of express stipulation to the contrary, to discharge financial liabilities of the conquered state, incurred before the outbreak of war.

Succession may be either Universal or Partial. When a state is completely absorbed by another state through subjugation or through complete merger, the succession becomes Universal. When a part of the territory of a state has won its independence and become

an International Person, after a successful rebellion or when one state acquires a part of the territory of another through cession, or when a full Sovereign state loses part of its independence by entering into a federal Union or coming under the suzerainty of another state, the succession in such cases becomes Partial.

CHAPTER VI

THE RIGHTS AND DUTIES OF PRIVATE VESSELS

Private vessels, subject themselves to the harbour regulations and quarantine rules as soon as they enter the territorial waters of another state. But beyond the territorial waters of another state there is no uniformity of rules amongst nations regarding any other civil liability attached to such ships. As regards criminal jurisdiction, it is recognised in International Law that such vessels subject themselves to the criminal jurisdiction of the territorial power. In England this principle was recognised, as late as 1878, by the passing of the *Territorial Waters Jurisdiction Act.* Before that it was held that no criminal jurisdiction existed.

In Rex v. Keyn, Lord Cockburn held that nowhere by usage, convention or by treaty, has the

British Government, been authorised to assume jurisdiction in criminal matters over a private vessel entering the territorial waters of England.

By the *Territorial Waters Jurisdiction Act* of 1878, it was enacted that an offence committed by any person, within the territorial waters of the state, shall be an offence within the Admiralty Jurisdiction, although committed on a foreign ship. Private vessels are thus subject to criminal jurisdiction of the state through which they are passing. They are amenable to the local law and to the processes of the local law in respect of all matters relating to liability for debt and damage, besides being subject to harbour regulations. But the better opinion seems to restrict the civil jurisdiction to harbour regulations and quarantine rules.

VESSELS PUTTING INTO A FOREIGN PORT UNDER CONSTRAINT—If a vessel be driven by stress of weather or forced by an act of God, to take refuge in the port of another state, she is not to be considered as subject to the Municipal Law of the latter, so far as it related to any penalty, prohibition or incapacity that would otherwise be incurred by entering such port, provided that she did nothing to violate the Municipal Law of the territorial power during her stay.

The principle, enunciated above, was recognised in the case of the *Creole*, an American vessel, carrying slaves and bound for New Orleans. On account of mutiny on board the ship, in which a number of slaves killed several members of the crew, as also owing to the stress of weather, the ship had to come to the British

port of Nassau. The slave-trading had been prohibited by legislation in England, so the British authorities in the port, while apprehending those who took part in the murders, set free the remaining slaves. This action of freeing the slaves gave rise to emphatic protests on the part of U. S. A. The Attorney-General of U. S. A. was consulted and he held that in these circumstances she was not to be deemed subject to the Municipal Law of England, in as much as, she had not violated any such law during her stay. The British Government, not content with the opinion of the Attorney-General of U. S. A. referred the matter to arbitration and an award was given against the British Government.

In the case of the *Industria*, the British Law Officers were of opinion, that a foreign vessel carrying slaves, which had put into a British port in distress. was exempt from capture or any liability by local authorities. The decision of the Attorney-General of U. S. A. is good in law. The correct principle may be laid down in the following terms:—

Whilst putting into port, under constraint, might be a good ground for excuse of such infringement of local regulations as was due to the exigencies of the position of the vessel, (e. g. harbour or quarantine regulations), it would not carry any legal right to exemption from local law or local jurisdiction, nor would such an excuse serve to exempt a vessel from the consequences of offences previously committed in violation of the Law of Nations.

The public vessels, whether or not, they are warships, are immune from the jurisdiction of the state through which they are passing. Such ships are regarded as floating portions of the state to which they belong. They are, however, subject to the ordinary harbour regulations. (The Parlement Belge, the Schooner 'Exchange' v. Mcfadden,)

CHAPTER VII

THE TREATY LAW OF NATIONS

Treaties form the contract law of states. The analogy between contracts in Municipal Law and contracts between states, however, must not be pressed too far. According to Municipal Law, a contract obtained by force is invalid. On the other hand, it is a well known fact that many important treaties have been wrung out of unwilling states as a result of force or threat of force, and such treaties have been deemed to be valid. Lord Birkenhead, in his book on *International Law*, has pointed out, "To introduce an armed force into the Conference Chamber for terrorising a negotiator into submission, would invalidate the agreement extorted from him."

While fraud vitiates contract in Municipal Law, a certain amount of fraud for the conclusion of treaties is allowable. The use of forged documents however for the purpose of concluding a treaty would

invalidate it. A certain amount of fraud is permissible but it is difficult to lay down the exact limits.

The right to make treaties is an inherent element of national independence and is the decisive test of sovereignty. When a treaty, however, is concluded by a party, who is not invested with necessary power or who acts in excess of the power conferred on him, the treaty may be considered null and void. A treaty has got to be ratified and ratification may be withheld if

(i) the representative has exceeded or deviated from his instructions,

(ii) if events have occurred, between signature and ratification, which make the fulfilment of the treaty obligations impossible,

(iii) when parties have been labouring under error, and

(iv) when the circumstances have changed.*

Prof. McNair in the *British Year Book of International Law (1930)* adopts the following classification of treaties :—

(i) having the character of conveyance,

(ii) Law-making treaties,

(iii) akin to Charters of Incorporation e. g. treaties which establish universal Postal Union.

BINDING FORCE OF TREATIES—Treaties terminate when a fixed time-limit expires or the main object of the treaty is fulfilled. They may also terminate by the consent of the contracting parties or by non-performance of certain essential conditions.

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* See Birkenhead's *International Law.*

In 1871, in the Declaration of London, the following propositions bearing on the subject were laid down:—"The plenipotentiaries (of Germany etc.) assembled today in Conference, lay it down that it is an essential principle of the Law of Nations that no power can liberate itself from the engagements of a treaty, nor modify the stipulations thereof, without the consent of the contracting powers and but by means of an amicable arrangement."

The following proposition may, therefore, be laid down:—"No independent government can, indefinitely and for ever, bind its successors by treaty, for if it is so held, the community, so shackled, can no longer be termed independent."

It follows therefore that every state becomes entitled to throw off the obligations of a treaty, as soon as the conditions which preceeded its formulation have undergone material modification. If, however, the obligation is only temporary or there has been no material change in the circumstances under which it was concluded, the breach of such a treaty would be wrong in International Law.

Article 19 of the Covenant of the League of Nations, provides that the Assembly may, from time to time, advise the reconsideration, by members of the League, of such treaties as have become inapplicable. The Assembly, however, is composed of representatives of over 50 States and can only act when a unanimous decision is arrived at. But it is hardly possible that fifty members would arrive at a unanimous decision.

Article 19, therefore, can not prove to be of great value.

Dr. Lawrence, in his book on *International Law* says, that the real difficulty in the application of this doctrine is the determination of the question as to what is an essential change, which justifies the repudiation of the treaty obligations. Commenting upon Article 19 of the Covenant he says that it may be of use as a means of testing opinion.

THE LEAGUE ON THE MATTER—Article 11 of the Covenant states, "It is declared to be the freindly right of each member of the League to bring to the attention of the Assembly or of the Council, any circumstance whatever, affecting international relations, which threatens to disturb international peace or the good understanding between nations upon which peace depends."

Article 18 of the Covenant provides that every treaty or International engagement must be registered with the Secretariat of the League and published by it and unless so registered, it will not be deemed to be binding on any state.

Article 19 has already been stated and commented upon.

CHAPTER VIII

RECOGNITION OF STATES

GRANT OF BELLIGERENT RIGHTS AND RECOGNITION OF BELLIGERENCY.

Recognition is one of the chief methods of putting the seal of approval upon the existence of a state. Prof. Oppenheim states that it is through recognition alone that a state becomes an International Person and a subject to International Law. It should, however, be borne in mind that the status of states recognised by one state and not recognised by all the states who are members of the Family of Nations, is indeed an anomaly. Therefore, even before recognition has been accorded, a state may be deemed to have a legal existence. The granting of recognition is a purely political act and proceeds from political considerations.

In this connection it is of importance to note the difference between the recognition of a new state and the recognition of the belligerent part of a state. Intervention in a purely domestic concern of other states, is generally held as inadmissible, but under certain circumstances, states cannot be the silent spectators of a rebellion, where the rebels have organised themselves, have got possession of a

territory, established a sort of state government and are conducting the rebellion according to the civilised methods of warfare. When the rebellion has assumed the magnitude stated before, the neighbouring states may hasten to consider whether it would be expedient from purely political consideratons, to grant recognition of belligerency to the rebels for the safety of their own interests in trade and commerce.

A large number of "*rebels*" in possession of the territory, who have succeeded in establishing a government of their own, to which allegiance is paid by large number of inhabitants, cannot be treated as ordinary rebels. It should, however, be remembered that the grant of belligerency right never proceeds as a matter of fact. It is necessary to consider, therefore, the situation of the foreign state and the condition of affairs between the parties. If the contest ends in war, in the manner in which it is understood in International Law, belligerent rights are recognised.

According to Phillimore, "The duty of protecting the commerce and just interests of its subjects, may compel a neutral maritime state to recognise belligerent rights at sea for the sake of enforcing belligerent obligations."

Belligerency, according to Phillimore and Dana is a question of fact; while according to Hall, it is a privilege to be granted or witheld, as a matter of pure grace, dependent upon the will of the recognising state. The former view, however, seems to be more correct.

In the case, however, of recognition of insurgency, such recognition may be accorded when there is a group of revolutionaries who are trying to obtain the freedomof their country from a parent state but have got no political organisation which entitles then to be recognised as legal belligerents.

"In regard to the recognition of belligerency, it may be stated that as soon as a community is recognised as belligerent, it has the effect—although only provisionally and in relation to the conduct of hostilities—of the rights and duties of the state in International Law. The parent state can no longer be held responsible for any act of such a community which may tend to affect prejudicially the interests or objects of other states.

The law governing recognition of insurgency is not quite settled. States which accord recognition of insurgency must also recognise the legal character of operations of war by vessels in the service of insurgents. Such vessels then cannot be treated as pirates, though the operations on the part of these vessels may tend to injure neutral property on the high seas.

Recognition of a new organisation or a new form of government—Where a state which was previously recognised as a new organisation, or a new form of Government is set up, whether by violence or peaceful means, it means a formal acknowledgment of the adoption by the recognising state of a new organ or agency for the conduct of its International relations, Luther v. Sagor, (1921, 3 K. B. C. A. 532).

When this case went to the Court of Appeal, the British Government had in the meantime concluded a trade Agreement with the Soviet Government, which was till then unrecognised. It was held that the acts of the Soviet Government must be treated "with all the respect due to the act of a duly recognised governing state."

CHAPTER IX

NATIONALITY

The nationality of an individual is his quality of being the subject of a certain state and therefore its citizen. Five common modes of acquiring Nationality are :—

By birth—

(a) *Jus Sanguinus—Nationality of male parents,*

(b) *Jus Soli—locality of birth.*

(c) A mixture of both (a) and (b)

By naturalization—It is the reception of an alien into the citizenship of a state, or in the narrower sense only on the formal grant of an application for the purpose. In the wider sense it includes naturalization by birth, marriage, legitimation, option, acquisition of domicile, or appointment as Government Official, according to certain states. Naturalisation releases

the naturalised subject from the former tie of allegiance.

By resumption of nationality, i.e., recovery of former nationality.

Through subjugation and cession of territory sometimes called Collective Naturalization.

BRITISH RULES—(a) Common law maxim, *Nemo potest exuere patriam* means, nobody can abjure his allegiance to his native land.

The Naturalization Act of 1870 gave the go bye to this doctrine by recognising naturalisation. But naturalization in enemy State is an act of treason.

Five common modes of losing nationality are—

By *Release* upon application, (British Act, Secs. 13 to 16.

By *Deprivation*, including revocation of Naturalization.

By *Lapse*—in certain cases by long residence abroad.

By *Option.*

By *Substitution*—acquiring a new Nationality.

DETERMINATION OF NATIONALITY—According to certain states the nationality of a subject is determined by the locality of birth (*Jus Soli*). This is the principle obtaining in Great Britain, U. S. A. and certain other countries; although in both the former countries it has been modified by Statutes. According to the Municipal Law of other States (Continental countries), it is governed by the male nationality of the parents (*Jus Sanguinus.*)

By the Common Law of England any person born within the British Isles or the British Dominions is a Natural born subject, whatever be the nationality of his parents; while a person born outside is an alien and this character could not be changed by any voluntary act on the part of the individual. Under the Common Law the status of a natural born subject depended on allegiance, and allegiance on the locality of birth.

This rule was, however, subject to a variety of exceptions, both in the Common Law and in the Statutes. Thus, the children of a British King or a British ambassdor, born on foreign soil or on private vessels on the high seas, are British natural born subjects. By the Nationality and Status of Aliens' Acts (1914, 1918, 1922) it was decided that

(a) A child born out of His Majesty's Dominions, of a father born within his Majesty's allegiance,

(b) Any person born within His Majesty's dominions, and allegiance,

(c) Any person born abroad whose father was a British subject, at the person's birth and whose birth had been registered at a British Consulate within 2 years,

is a British subject. Children born abroad are also regarded as British subjects.

NATIONALITY IN U. S. A.—According to the revised Statutes of U. S. A. all persons born in U. S. A and not subjects of any foreign power are declared to be the citizens of U. S. A.

NATIONALITY IN THE FRENCH LAW—The following will be the French citizens :—

(i) Child born anywhere of French father,

(ii) Child born in France of unknown parents or parents of unknown nationality,

(iii) Child born of foreign parents, one of whom was born in France, subject, however, to this rule that when it was the mother the child was entitled to a right of renunciation within one year of attaining majority.

By Act V of the Law of 3rd July 1917, every male person born of a foreign father and domiciled in France becomes a French subject at the age of 18 years unless within 3 years he claims the nationality of his origin.

In R. vs. Lynch it was held that it was not permissible for a British subject to get naturalized in any other country when England was at war with that country.

DUAL NATIONAL CHARACTER—A child born in England of French parents will be entitled to be regarded as an Englishman under the English Law and a Frenchman under the French Law. To obviate these difficulties it has now been settled that if such a person, of full age and under no disability, makes a declaration of alienage on his attainment of majority, he will cease to be a British subject or a French subject, as the case may be.

STATELESS PERSONS—These are persons having no national character. Under certain circumstances it seems possible for an individual to be destitute of national character.

In Stock vs. Public Trustee (1921—2Ch. 67), the plaintiff was a natural born Prussian who obtained his discharge from Prussian nationality. He stayed in England for a long time but did not get naturalized there. During the war, he was interned, deported to Holland, and thence went to Germany. He was the owner of certain shares in a limited company in England and in regard to these shares the Board of Trade proposed, in 1916, to make a vesting order on the ground that he was an enemy. Russel J., before whom the case was heard, held that he had lost his German nationality and as such he was not a German national.

It was further laid down that statelessness is recognised by German Municipal Law and is not unrecognised by the Municipal Law of this country. Russel J. quoted, with approval, a passage from Oppenheim (Vol. I pp. 387-389-2nd Edition) that "..... A person may be destitute of nationality, knowingly or unknowingly, intentionally or through no fault of his own."

A person may be stateless even by birth. An illegitimate child born in Germany of an English mother is actually destitute of nationality, because according to German Law, he does not acquire German nationality, and according to British Law he does not acquire British nationality. Thus, again, all children born in Germany, of parents who are destitute of nationality, are themselves stateless. According to German Law, statelessness may also take place after birth. All individuals who have lost

their original nationality, without having acquired another, are in fact destitute of nationality.

The question of nationality of absentee individuals has from time to time created many difficulties for the states concerned. As regards the remedy for such difficulties it is comparatively easy to meet them. If the number of stateless persons increases very much in a certain state that state can require them to apply for naturalisation or order them to leave the country. It can even naturalise them against their will, as no other state will or has a right to interfere. Statelessness is also recognised by the Municipal Law of England.

In regard to foundlings and illegitimate children, the Hague Convention of 1930 provides that a child whose both parents are unknown, shall have the nationality of the country of birth.

In case of minor legitimate childern of naturalised subjects, it is provided by the said Convention that they acquire the new nationality of their parents.

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CHAPTER X

DIPLOMATIC AGENTS.

The classification of diplomatic agents, resident in foreign countries, was regulated by the protocols of the Congress of Vienna in 1815, and the Congress at Aix-la-Chapelle in 1818. It is as follows:

(i) Ambassadors and papal legates or nuncios;

(ii) Envoys extraordinary, or ministers plenipotentiary;

(iii) Ministers resident, accredited to the sovereign;

(iv) *Charges d' Affaires* accredited, not to the sovereign, but to the Minister for Foreign Affairs.

This classification is only of importance in relation to questions of precedence and ceremonial.

The ambassadors represent the person and dignity of their sovereigns as also their affairs. The envoys are accredited to Soverigns while Charges d' Affairs are accredited to the Ministers of Foreign Affairs. The ambassadors occupy the highest and the most priviledged position in the hierarchy of diplomatic agents.

The Public Ministers (diplomatic agents) are immune from civil and criminal jurisdiction of the state to which they are sent as ambassadors. In case they conspire against the safety of the state, they may

be expelled. In regard to the civil jurisdiction, it may be stated that they cannot be sued for torts, for recovery of debts or for breach of contract. They cannot be asked to depose in a court. They are also immune from payment of taxes. Their official residence is immune from search or visit of the police. Not only do they enjoy these previleges and immunities, but the members of their *suite* are also entitled to enjoy them.

In regard to granting of asylum in foreign legations to political refugees, International Law and practice are still uncertain.

The dependent relatives of a Public Minister are entitled to claim exemption from civil and criminal jurisdiction. In this connection the case of Don Pantaleon Sa is of considerable importance. He was the brother of the Portuguese Ambassador in London, who, while staying at the Portuguese legation, killed an Englishman in London and was tried and hanged in 1653. His execution gave rise to doubts regarding the propriety of his trial and conviction. Oppenheim regards the incident as an obsolete precedent, but Lawrence holds that he was rightly tried and convicted, as he was in the position of an ordinary visitor at the embassy and therefore could not claim the privilege of personal inviolability.

The wife and children of the ambassadors also share the same immunities. But in regard to the servants of an embassy, if an offence is committed outside the Minister's residence, the local police have got jurisdiction over such servants, but the chaplain,

the private secretaries, the messengers, and the couriers are free from arrest.

THE LETTER OF CREDENCE—The state which accredits an ambassador, sends the Letter of Credence to be handed over to the head of the State who is to receive the Minister, but in the case of the Charges d' Affaires, the Foreign Minister of the State sending him forwards the Letter of Credence to the Foreign Minister of the State who is to receive him. On arrival at the foreign capital, where the embassy is generally situated, the ambassadors are entitled to demand an audience of the Sovereign. Such an audience is called a Public Audience.

The Ministers of the second and third classes are entitled to private audience whereas the Charges d' Affaires are entitled merely to have the audience of the Foreign Minister.

A public audience is more ceremonious than a private audience. On his departure a diplomatic agent is to present his letters of recall to the Sovereign or to the head of the State, as the case may be.

CONSULS—Consuls look after the domestic interests of their states in foreign countries. They do not enjoy immunities and privileges of the public ministers. They are subject to the civil and criminal jurisdiction of the State, though exempt from the payment of income-tax and other taxes upon their personal property, but they are not immune from payment of taxes in regard to any private business in which they may be engaged.

CONSULAR COURTS—They were established for exercising civil and criminal jurisdiction by the European states over the their nationals residing in oriental countries in the 14th. and 15th. centuries. The consular courts had jurisdiction not only over the citizens of their own country but also over matters between the citizens of their own country and the inhabitants of the non-Christian powers. At the present time such courts exist in China and in several parts of Africa.

CHAPTER XI

SELF-GOVERNING BRITISH DOMINIONS

The Self-governing Dominions of the British Commonwealth of Nations known as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Dominion of Newfoundland and the Free State in Ireland have been emancipated from most of the legal disabilities and restrictions limiting their legislative competence, ever since the passing of the Statute of Westminster. The chief importance of the Statute of Westminster, therefore, is constitutionl rather than International. It does not touch the more general questions of diplomacy, treaty-making powers and external Sovereignty, which according to certain writers are still governed by the existing practices and resolutions of the Imperial Conferences. In the matter of Legislation for Merchant Shipping the new law suggests possibilities of international interest.

We are concerned here mainly with the international positions of the Dominions. So far as internal freedom is concerned, the Dominions have got the right of passing any law, even though repugnant to the Imperial Statutes applying to such Dominions. Under the said Statute no restriction has been placed upon the constituent power of the Irish Free State and of the South African Government, but the same does not hold good in the case of other Dominions. Section 7 of the Statute goes on to say that the British North American Act cannot be altered by the Canadian Parliament, but shall continue, as heretofore, alterable by the Imperial Parliament only, which passed it

As regards New Zealand several restrictions have been placed upon the constituent power of New Zealand. The constitution of New Zealand is contained in an Imperial Act of 1852. By a subsequent Imperial Act, the Legislature was empowered to amend or repeal the provisions of the constitution, with the exception of certain articles, one of which is, that the Legislature shall consist of two Houses and the members of the Legislature shall have to take the oath of allegiance. Thus it is apparent that restriction has been placed upon the constituent power of the New Zealand Legislature.

Regarding Australia, it is enacted that she shall not have power to repeal or alter the constitution, otherwise than in accordance with the pre-existing law, i. e., by referendum.

The exact words dealing with the Equality of Status, in the Resolution of the Imperial Conference

of 1926, regarding the position and mutual relations between Great Britain and the Dominions are—

"They are autonomous communities within the British Empire, *equal in status*, in no way subordinate one to another in any aspect of the domestic or external affairs, though united by the common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations."

But the next sentence of the report says that while Dominions are equal in status, they are not equal in function. To quote the exact words—"The principles of equality and similarity, appropriate to status, do not universally extend to function. Here we require something more immutable than dogmas, e. g., to deal with questions of diplomacy, and questions of defence. We require also flexible machinery which can, from time to time, be adapted to the changing circumstances of the world. This subject also has occupied our attention. The rest of this report will show how we have endeavoured not only to state political theory but to apply it to our common ends."

Several authors, for example, Schlossberg and Baker, lay stress upon the equality of status, while on the other hand Dr. Keith emphasises the equality of function. Schlossberg in his book *The King's Republics* writes—"Neither Great Britain nor any of the Dominions knows any authority over itself except its own free national will. The degree and nature of Dominion status is equal to that of Great Britain without any inferiority or reservation. Whatever, therefore, may be the nature or the degree of liberty or indepen-

dence enjoyed by Great Britain, the same will have to apply to the Dominions."

Again "The Brittanic alliance has no personality, can own no property except as a partnership, has no corporate conscience, cannot sue or be sued, and has only a common will when acting together after consultation and agreement in a definite transaction. It is merely a name indicating, not a body corporate like the League, nor a Confederation like the United States of America, but an association of States, free to agree whether or not they will act in a particular transaction, in a particular manner, for a particular purpose."

Prof. Keith, in his *Sovereignty of the Dominions* writes, "The Essential position is that the autonomy of the Dominions, wide and important as it is, is subject to certain definite limitations."

In regard to the question of war and neutrality, Keith maintains that the Empire can only be at peace or at war, as a single unit. On the other hand Schlossberg maintains that the Dominions have the right to remain neutral and even to declare war. But Keith's view is that both law and usage make it abundantly clear that in regard to deciding questions of war and peace, they may be termed to be functions reserved to the Government of the United Kidgdom. It may be stated here that the Irish Government has declared itself neutral in the present war.

The question, however, how far each Dominion is entitled to remain neutral when Great Britain is at war, or how far a Dominion can declare

war against a state when Great Britain is at peace with that power, has not yet been finally decided. According to Prof. Higgins, if a war is declared against Great Britain by any foreign State, the Dominions willing or unwilling, would be involved in the war as belligerents.

Those who adhere to the strict autonomist view, like Schlossberg, maintain that this is not the correct position. According to them, the King declares war for that country whose government advises him to declare war. Before all the Dominions can be deemed to be at war, each of the free Governments of the Empire, i. e., each of the six Self-Governing Dominions, must advise the king to declare war, in the name of each Government. This school of thought derives additional strength from the fact that the Dominions are members of the League of Nations as international units, having the right to remain neutral when Great Britain or any portion of the Empire is at war. The Treaty of Locarno (1925) provides that the said treaty shall impose no obligation on any of the British Dominions unless the Government of such a Dominion signifies such assent.

The logical conclusion drawn by this school (Schlossberg School) is that when one Brittanic State is at war, it does not mean that all the other Brittanic States are automatically drawn into the war as belligerents. The two schools of thought thus hold different views and time and international developments may clarify the issue.

Schlossberg, however, relies upon a speech of Mr. Amery in the House of Commons, on June 29,

1927, which was to the effect that "Every Government of the Empire, if it so wished, is entitled to exercise every function of national and international right."

In regard to the question of secession, Schlossberg is of opinion that the Dominions can not secede, for if they do, they would be acting unconstitutionally. They will have to abolish Kingship and it would be an illegal act. They have no right to abolish the Kingship and thus put an end to the legal bond which alone makes them part of the Empire.

TREATY-MAKING POWER OF THE DOMINIONS—The resolution of the Imperial Conference of 1926 on the Treaty-making Powers of the Dominions is very pertinent. The provisions are—

1. Negotiations—It is desirable that no treaty should be negotiated by any of the Governments of the Empire, without due consideration of its possible effects on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.

Before negotiations are opened with the intention of concluding a treaty, steps should be taken to ensure that all the Governments of the Empire are informed, so that, if any such Government considers that its interests may be affected, it may have an opportunity of expressing its views or when its interests are intimately involved, of participating in the negotiations.

Signature—Bilateral treaties imposing obligations on one part of the Empire should be signed by a representative of the Government of that part.

The full power issued to such representatives should indicate the part of the Empire in respect of which the obligations are to be undertaken and the preamble and text of the treaty should be so worded as to make its scope clear.

The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the Government of that part.

In regard to the Halibut Fishery Treaty concluded between Canada and U. S. A., Mr. Mackenzie King, the then Prime Minister of Canada said: "I think rightly...that the Government of the Dominion which was tendering the advice (to the King) in such a case, was the Government that was responsible; that it was advising His Majesty directly in regard to matters which were of sole concern to the Dominion; that in the transmission of that advice the British Government was acting as a channel through which that advice was transmitted, but was not the Government which was formally tendering the advice."

This is the correct position with regard to the treaty-making power of each Dominion.

At the Treaty of Versailles, four Dominions were made, each in its own name, signatories of the said treaty and became original members of the League of Nations (See Article 26).

In September 1923 the Irish Free State was admitted to the membership of the League of Nations and was elected to the Council of the League in 1930.

CHAPTER XII.

THE LEAGUE OF NATIONS.

The League is not a State. It has none of the attributes of the Sovereign power. It does neither govern nor make laws. It is often referred to as a Super-State but it is not so. It is an association of States in which, each, while retaining its Sovereignty and Status agrees to persue a certain line of conduct in international affairs, in consonance with the Covenant of the League and to co-operate in certain matters of general international importance.

In regard to the composition of the League it may be stated that it works through an Assembly, a Council and a Permanent Secretariat. The Assembly is a large body which consists of representatives of all the members of the League while on the other hand, the Council of the League is a smaller body which consists of the representatives of Great European Powers and representatives of four other members of the League. The Council may, on the approval of the Assembly, name additional members of the League whose representatives shall always be members of the Council or may increase the number of the members of the League for representation on the Council.

While the Assembly is to meet at stated intervals, the Council must meet at least once a year. It is apparent from the composition of the League and the Assembly that while all the members of the League are treated in the Assembly on the footing of equality there is inequality in the Council. The Council may be stated to be the executive body.

There is a Permanent Secretariat situated at Geneva, with the Secretary General, at its head. The Secretariat prepares the agenda for the Council and the Assembly, keeps the minutes of their meetings and of the meetings of the Committees appointed by both the bodies. Its task is to see that the resolutions of these bodies and the administrative work of the Assembly and the Council, are all carried out regularly and efficiently. It has got on its Staff officials who are well-versed in International Law.

The Covenant came into effect from the 10th. of January 1920, and the opening words in the preamble are that the high contracting parties agree to the Covenant "in order to promote international co-operation and achieve international peace and security, by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable treaties between nations, by the firm establishment of the understandings of International Law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another." These are

indeed very important for they set out the two fundamental objects, viz, promotion of international co-operation and the maintenance of international peace.

A member seeking to withdraw from the League, must give two year's notice. A member of the League who has violated any Covenant may be expelled from the membership through the decision of the Council agreed to by all the representatives of all the other members (Article 16). If a member dissents from the amendments of Covenant which has been ratified by the Council and a maiority of the the Assembly, it ceases to be a member of the League (Art. 26)

The Assembly may deal with any matter within the sphere of action of the League or, which tends to affect the peace of the world; but it is important to bear in mind that all the decisions must be taken by a unanimous vote, except where otherwise provided by the Covenant. All procedural matters are decided by majority of the members present at the meeting, but there must be a two-thirds majority in case of admission of new members into the League.

The Covenant provides for a Permanent Armament Commission whose function is to advise the Council in regard to adoption of steps for the reduction of armaments. (Arts. 8 and 9); a Permanent Court of International Justice (Art. 14), and a Permanent Mandates Commission (Art. 22). The League also provides for the establishment of an International Labour Organisation which should work under the League, charged with the duty of securing fair and

humane conditions of labour throughout the world. With this purpose in view an International Labour Office has been established. It is managed by a body of 24 members. The Labour Organisation reports on the conditions of labour and seeks to prevent unemployment.

The League is charged also with the solemn task of stopping the traffic in women and children, dangerous drugs, and of securing freedom of transit and equitable treatment, so far as the commerce of all the members of the League is concerned.

There are two limitations upon the sphere of action of the League. Article 15, paragraph 8, is to the effect that in the case of dispute between two members of the League which arises out of matters which by International Law, are solely within the domestic jurisdiction of that party, the Council shall only content itself with reporting but shall not make any recommendation in order to effect the settlement. The League also cannot seek to sit in judgment over treaties of arbitration or regional understandings like the Monroe doctrine, (Art 21).

Article 16, is one of the most important Articles in the whole Covenant, for it provides that if any member of the League resorts to war in violation of its Covenant relating to arbitration or enquiry by the Council, it shall *ipso facto* be deemed to have committed an act of war against all other members of the League, who shall thereupon immediately cut off all commercial relations between the nationals of that State and of other States. The

Council shall also recommend in that case, the military, naval and air force to be contributed by each State. In case, however, of a dispute between a member of the League and a non-member or between non-members, an invitation shall be extended to such member or non-member first, before the League undertakes to settle the dispute and if the non-member or the non-members agree not to accept the membership and choose to resort to war, Article 16 will come into operation.

Article 10 of the Covenant binds the members, "to respect and preserve as against external aggression the territorial integrity and existing political independence of all the members of the League". In this connection it will not be out of place to mention that the Treaty of Locarno of 1925, which is a treaty of mutual guarantee, entered into between Great Britain, Belgium, Germany, France and Italy binds the five contracting powers *collectively* and *severally* as guarantors for the maintenance of territorial *status-quo*. They undertake that they shall, in no case, attack or invade or resort to war against one another. The Pact of Paris of 1928, entered into by a large number of powers is virtually in favour of outlawry of war. It only permits a power to wage defensive war.

The League has undertaken the great work of the Codification of International Law and with this purpose in view, appointed a Committee on various matters, e. g., on nationality, territorial waters, and responsibility of States.

In regard to the character of the League, it may be stated that the majority of scholars of International Law are in favour of holding the view that the League is a Confederation though it is a new type of Confederation. Prof. Oppenheim is the only scholar who holds that it is, not a Confederation.

MAINTENANCE OF PEACE UNDER THE LEAGUE— In order to appreciate this topic mention must be made of certain articles, notable amongst which are 8, 12, 13, 15, 16, 17, and 20. Article 8 requires the reduction of national armaments to the lowest point, consistent with national safety, and enforcement by concerted actions of international obligations. Article 10 enjoins upon the members of the League "to respect and preserve, as against external aggression, the territorial integrity and existing political independence of all the members of the League." Article 11 provides that all the members of the League must share in the collective responsibility of the League in the case of any war or threat of war, whether immediately affecting any of the members of the League or not. Articles 13 and 15 call upon the members to submit disputes, which may lead to rupture of peaceful relationships, either to arbitration or to judicial settlement or enquiry by the Council. Articles 16 & 17 provide for bringing pressure upon a State which violates the obligations of the Covenant by breaking off all commercial and financial intercourse with that State. There is also the provision that armed forces must be contributed by each member of the League,

in order to carry the sanctions of the League into effect. Article 20 nullifies all previous agreements and obligations between powers inconsistent with the Covenant of the League.

There is a Permanent Mandates Commission under the aegis of the League which is to report annually on any matter connected with the working of the mandate system. Article 18 provides, that every treaty or international engagement entered into, hereafter, must be registered with the Secretariat and as soon as possible must be published by it. Article 19 provides for the reconsideration of the treaties by the members of the League which have become inapplicable. (See Chapter VII on 'Treaties')

Oppenheim affirms the personality of the League and proceeds to give examples of the rights and powers which, as a person in International Law, it possesses. He instances the right of legation, rights of Sovereignty over the Saar and the mandated territories, the right of intervention for the protection of the Minorities, the capacity to hold Protectorate e. g., over Danzig, and the right to declare war or make peace.

THE RIGHT OF LEGATION—Several members of the League maintained at Geneva permanent officials through whom communications to and from the Secretariat pass and whose duty is to keep their respective Governments informed as to the progress of the League's work. In Article 7 of the Covenant of the League, it is provided that representatives of the Members of the League, when engaged on the

business of the League, are to enjoy diplomatic immunities and privileges.

According to Jellinek, the League of Nations being a permanent contractual union of independent states having for its objects the preservation of peace and the protection against war and aggression, and possessing a permament organization for the realization of those ends, is a Confederation. Jellinek does not concede personality to such unions. The best way therefore to describe the League of Nations is that it is *Sui generis*.

CHAPTER XIII

PERMANENT COURT OF INTERNATIONAL JUSTICE

Article 14 of the Covenant of the League of Nations laid down plans for the establishment of a Permanent Court of International Justice. It was stated that the Court shall be competent to hear and determine any dispute of an international character which the parties may submit to it. The Court may also give advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

The Council of the League appointed a Committee of ten jurists to prepare a statute for the establishment of the Court and the report of this Committee was adopted by the Assembly with certain modifications in 1920. The Court was opened on 15th Feb. 1922. It consists of 15 members, 11 judges and 4 deputy-judges. The maximum number provided in the Statute is 10 judges and 6 deputy-judges. The function of the deputy-judges is to fill up the places of the judges who are unable to attend the Court. Nine judges form the quorum. They are elected by the votes of both the Assembly and the Council. The judges and the deputy-judges enjoy diplomatic privileges and immunities so long as they are engaged in the judicial functions of the Court.

It is an improvement upon the Tribunal established at the Hague for this Tribunal was not a permanent Court, nor were its judges a body of permanent officials. For the Hague Tribunal, states could select their own judges from a panel and could even go outside the panel.

The Statute creating the Permanent Court also makes provision for the appointment of national judges when a contest comes up before the Court in regard to countries which have no judges of their own nationality on the bench. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the treaties and conventions in force (Article 36 of the Statute.). It is also provided that members may accept the optional clause by signing a separate protocol, the

signature thereof would involve the adjudication in the Court of the following matters :—

(1) Interpretation of a treaty,
(2) Questions of International Law,
(3) Existence of any facts, which if proved would involve a breach of international obligations,
(4) The nature or extent of the reparation to be made for a breach of an international obligation.

More than twenty States have accepted the protocol. The British Government accepted the jurisdiction of the Court in 1927, with the reservation that

(i) disputes in regard to which the parties have agreed or shall agree to have recourse to some other method of peaceful settlement;

(ii) disputes with the Government of any other Member of the League who is a Member of the British Commonwealth of Nations; and

(iii) disputes in regard to matters which fall within the exclusive jurisdiction of the United kingdom.

All thse disputes shall be settled in such manner as the parties have agreed or shall agree. The optional clause was also signed by the Dominions and India. (See *The Optional Clause* by Fischer Williams—*British Year Book of International Law* 1930).

The laws which the Court shall apply will be—

(i) International conventions recognised by the States in conflict in the Court,

(ii) International custom.

(iii) General principles of law accepted by civilised States.

(iv) Judicial decisions, and

(v) The teachings of most highly qualified publicists of various States.

The Court is competent to give advisory opinion when it is sought by the Council or the Assembly of the League.

Advisory opinions have no binding force and the Assemby or the Council may come to any decision even contrary to the advice given by the Permanent Court.

Article 59 of the Statute of the Permanent Court provides that the decision of the Court has no binding force except between the parties and in respect to that particular case. Article 60 lays down that the judgment is final and without appeal. But provision for the revision of the judgment is made in Art. 61, on the discovery of certain facts of a decisive nature which when the judgment was given, were unknown to the Court and to the party.

THE COURT'S RELATION TO THE LEAGUE—The judges of the Court are elected by the Council and the Assembly but they cannot be removed by the League. The budget of the Court is under the control of the Assembly. The portals of the Court are open to the members of the League and other States set forth in the annex of the Covenant of the League. As already mentioned, the Court may give advisory opinion upon

any dispute or questions referred to it by the Council of the Assembly. (See Hall, Lawrence, Fenwick, *International Law*)

CERTAIN IMPORTANT DECISIONS OF THE PERMANENT COURT—*The Lotus case.* The facts of the case briefly stated are as follows. As a result of a collision taking place on high seas between a French and a Turkish vessel, the Turkish ship foundered and several Turks died. When the French ship "Lotus" entered the Turkish waters the French navigating officer was put on trial for man-slaughter and the jurisdictiou of the Permanent Court was invoked.

In the "*Lotus*" case the majority of the judges making certain observations upon the nature of the International Law, said "International Law governs the relations between independent States. The rules of law binding upon States, therefore, emanate from their own free will as expressed in conventions or by usages, generally accepted as expressing principles of law and established in order to regulate the relations between co-existing independent communities or for achievement of common ends. Restrictions upon the independence of states cannot therefore be presumed. The first and foremost restriction imposed by International Law upon a State is, that failing the existence of a permissive rule to the contrary, it may not exercise its power in any form in the territory of another State."

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*See Articles by Mr. Beckett in the British Year Book of International Law.

The "Lotus" Case also decided that a crime may be regarded as having been committed at a place, where it produces its effects, notwithstanding the fact that the accused was physically present at another place at the time ef commission of the crime. The jurisdiction of a State, to punish offences committed by foreigners in its territory, extends to offences producing their effects within the territory, although the offender himself was outside the limits of such territory at the time of the commission of such offence.

German Settlers' Case—In the case of the 'German Settlers' in Poland, the Court laid down an important proposition in the following terms: "Even those who contest the existence in International Law of a general principle of State succession, do not go so far as to maintain that private rights including those acquired from the State, as the owner of the property, are invalid, as against a successor in sovereignty."

Upper Silesia Case—In the 'Upper Silesia' case, the Court laid down the proposition that a treaty only creates law between the States which are parties to it. In case of doubt no rights can be deduced from it in favour of third parties. It should be noted, however, that this case did not categorically state that under no circumstances may third parties acquire rights under the provisions of a treaty to which they are not parties.

The Wimbledon Case—In the Wimbledon case, the Court laid down the law in regard to the passage of ships through the 'Kiel' Canal: "When an

artificial water-way connecting to open seas, has been permanently dedicated to the use of the whole world, such water-way is assimilated to a natural strait, in the sense that even the passage of a belligerent man-of-war does not compromise the neutrality of the Sovereign State, under whose jurisdiction the waters in question lie.

(See also the "Serbian Loans" and the Brazilian 'Loans', the "Mavrommatis" Case, "Chorzow Factory" case, "The Eastern Carelia Affair", and "The Freezone's" case.)

CHAPTER XIV

DOCTRINE OF NECESSITY AND SELF-PRESERVATION.

Necessity, according to Grotius, creates a definite right, and cannot be deemed to be a mere excuse. This right can be invoked even against an innocent party, for, he maintains that if an individual cannot otherwise save his life, he may use any degree of force against one who may endanger it even if the man has committed no fault. Thus this right can be used even against an innocent man.

Puffendorf endorses this view, but the French writers hold that this doctrine should not find a place in International Law, for it is a mere cloak for committing illegal acts.

Oppenheim thinks that this doctrine is of German origin, and is inseparably connected with the idea of self-preservation. Phillimore is a strong advocate of this doctrine.

Lord Stowell, in *the Christianberg* says, "If it were merely an act of necessity, it will be a suffcient justification for everything that is done fairly and reasonably under it."

In the case of *the Gratitudine*, the Judge laid down, "Necessity creates the law; it supersedes rules and whatever is reasonable and just in such cases is likewise to be considered legal."

In the case of *the Zamora*, the Court quoted with approval a passage from the case of the *Curlew*, wherein it was stated that though as a rule the Court (Prize Court) has no power of selling or bartering the goods in its custody, prior to adjudication, there may be cases of necessity when a belligerent power may requisition vessels or goods in the custody of the Prize Court.

The passage of Frederick the Great through neutral Saxonia, in 1776 was justified by necessity. In 1807 the capture of the Danish fleet by the British fleet was justified by the British Government on the ground of necessity. The British Secretary of State, Canning, justified the capture of

the neutral fleet belonging to Denmark by stating, "To abstain from the cause which prudence and policy dictated, in order to meet those calamities that threaten our security or existense, because if we fell under the pressure we should have the consolation of having the authority of Puffendorf to plead," is indeed a poor consolation. (See on this matter article in *The Transactions of Grotius Society*, 1939).

In the famous case *the Schlosser*, it was stated by the British Government to the Government of U. S. A., "There are possible cases in the relation of individuals as of nations, where necessity, which controls all other laws, may be pleaded but it is neither safe nor easy to attempt to define the rights and limits to such a plea." The answer of the U. S. A. Government ran to the effect that, "the danger must be instant, overwhelming, leaving no choice of means and no moment for deliberation, before a state can invoke the doctrine of necessity or self-preservation." This interpretation by the American Government has become classic.

Japan, invoked the right of necessity when she invaded and occupied the neutral state of Korea.

Whether necessity exists or not, will be determined, by the consideration of all the facts and circumstances of each individual case. Necessity is sometimes adopted as a cloak for self-aggrandisement. But when it is so prompted it cannot have any place in International Law. The English Criminal Law case of R. v. Dudley cannot affect the validity of the doctrine in the international sphere.

DOCTRINE OF MILITARY NECESSITY—Military necessity cannot override the laws of warfare and the Hague Conventions. The German Government, during the last World-war, held that though the laws and customs of war must be ordinarily respected, in exceptional circumstances where the observance of such laws would endanger the safety of the army or the attainment of the supreme object of war, the rules may be violated on the ground of self-preservation.

According to Von Moltke, war should be terminated as quickly as possible and therefore all those means, as are not positively condemnable, are permissible. But the German view is not correct, for, it has not commended itself to the acceptance of the majority of European States.

CASE ON SELF-PRESERVATION—In 1838, during the Canadian Rebellion, a body of Canadian insurgents obtained arms and guns by seizing them within the American territory (at the frontier of U. S. A. and British territory) and were trying to go to the British territory on a hostile expedition by boarding the steamer, the Caroline. But a contingent of British forces boarded the Caroline, while she was in American waters and sent her down the Niagara.

The U. S. A. Government protested, but the British Government replied that, the necessity of self-defence was instant, overwhelming, leaving no choice of means, and no moment for deliberation. (1) There was no choice of means as the American Government showed powerlessness in the matter.

(2) There was no time left for deliberation, in as much as the invasion was imminent and (3) nothing had been done in excess of what the occasion demanded.

Prof. Hall says that the measures adopted under self-preservation must be confined within the narrowest limits consistent with obtaining the required end. Under this doctrine, acts of violence against a friendly or a neutral state may be justified.

(i) "When from its position and resources, it is capable of being made use of to dangerous effect by an enemy,

(ii) when there is a known intention on his part so to make use of it, and

(iii) when, if he is not forestalled, it is almost certain that he will succeed, either through the helplessness of the country or by means of intrigues of a party within it.

See Hall—*International Law.*

CHAPTER XV

THE SETTLEMENT OF DISPUTE

Disputes between states may be settled either by amicable or by compulsive means. The following are the amicable means of settlment:—

(i) By Negotiation.

(ii) By Good offices and Mediation.

(iii) By Conciliation.

(iv) By Abritration.

(v) By the Permanent Court of International Justice, whose function is to settle matters judicially.

(vi) By machinery of the League.

The following are the compulsive means of settling differences between states not amounting to war:—

(a) RETROSION means retaliation by means of acts which is within the strict legal rights of a state to perform. It is applicable only to political differences.

(b) REPRISALS—which mean measures of force applied by one state to another to secure the redress or discontinuance of an international illegality which would in the absence of such justification be itself internationally illegal. The different forms of reprisals are *(i) Embargo on ships. (ii) Pacific Blockade. (iii) Occupation of territory and (iv) Detention of persons.*

Embargo on ships is an order generally forbidding ships of offendings tates to leave the ports of the state laying the embargo. On a declaration of war, each belligerent nation may lay an embargo on enemy ships within its ports and hold them as security for the fair treatment of its own vessels. There are different meanings of the term embargo. See *Don Pacifico* case; *the Boedes Lust.*

Pacific Blockade means the prevention by a state of communication with a part or whole of the coast of another state, otherwise than as an act of war, with the object of applying pressure. The first instance happened when Great Britain, France and Russia blockaded Turkey in 1827.

Occupation of territory—The following are certain important instances:—The French occupation of Mitylene in 1901, the American occupation of Vera Cruz in 1914, and the Italian occupation of Corfu in 1923.

(c) INTERVENTION means the dictatorial interference of a third state in a difference between two states in order to impose a particular settlement of the differences. Pacific Blockade is also one of the methods of intervention.

CHAPTER XVI

WAR AND ITS EFFECTS

WHAT IS MEANT BY WAR—Prof. Westlake defines war as "..... the condition or state of the Governments contending by force." (As regards English Courts it is for the Executive to determine whether there is war or not.)

IS PRIOR DECLARATION OF WAR NECESSARY ?—

No safe answer can be given to the question, as the practice of the states varies greatly. It may, however, be said, in general, that no state has the right to spring a surprise attack upon another state.

The question whether Japan was justified in opening hostilities against Russia without a prior declaration of War must be judged by the Customary Law, and not by the present Conventional Law which is embodied in the Hague Convention No. III of 1907, which lays down a convenient practice for future observance. The charge against Japan that she had sprung a surprise upon Russia is unfounded, in as much as war arose only after the failure of a long series of negotiations, and both parties had been hurrying on their preparations for war, and both knew

that war was not only most likely but was almost inevitable.*

On the 6 th, of February 1904, Japan severed diplomatic relations with Russia, observing that it reserved the right to take such independent action as it might consider best to consolidate and defend its menaced position. This warning had been given two days before the attack on Port Arthur by the Japanese fleet. It was held by the majority of text book writers on International Law that Japan had not violated any rule of war, though amongst them divergent views are to be seen—one side insisting that there was absolute necessity of *a prior declaration* "or at any rate of *specific notice* directly addressed by an intending belligerent to his foe," while others regard *a proclumation or manifesto* addressed to the enemy state as sufficient. There is a *third* class of writers who "regard both *declaration* and *notice* as unnecessary, treating those usually issued in practice as intended for information of the subjects or neutrals than of the enemy." This brings us to the question of the *International Practice* obtaining in such cases and it will be seen that from 1700 to 1870 there have been only ten instances of a declaration of war. In 107 instances there was no such declaration.

In the case of *Eliza Ann*, Sir William Scott held that war might exist even without a declaration on either side and a declaration of war by one country

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See on this point particularly Pitt Cobbett—*Leading Cases on International Law*—Controversy between Russia and Japan (1904).

was not a mere challenge to be accepted or refused by the other.

In Janson v. Consolidated Gold Mines—it was pointed out that no amount of strained relations could be said to establish a state of war so as to affect the subjects of either country in their commercial or other transactions for the simple reason that law recognised a state of peace and a state of war, but knew nothing about the intermediate state which was neither the one nor the other. By Art. 1 of the Hague Convention of 1907, it is settled that hostilities cannot commence without previous and explicit warning which must be in the form either of a declaration or of an ultimatum with conditional declaration of war.

ROUSSEAU'S DOCTRINE—Rousseau held that war is a contention by force between two states. This theory, though partially correct, cannot be deemed to be the accepted theory in International Law, for it would mean the severance of the individual from his state in all that pertains to war. Rousseau's theory takes into account only the combatants of either country and leaves out of account the civilian population. But under the present methods of warfare the individual is also seriously affected at many points in respect of person and property by the operations of war, just as the soldiers are. As soon as war breaks out, not only are the combatants on either side affected but the civil population is also affected in many important respects, e. g., in commercial interests. On the outbreak of war

the principle of Nationality is superseded by that of Domicile.

DOMICILE—The Domicile here means the domicile for commercial purposes. It is styled "Commercial Domicile." It means a settled residence in a particular country for the purpose of trade by virtue of which a person even though a subject of some other state is deemed in the eye of International Law to be identified with the state in which he resides and carries on trade. His nationality is deemed to be of no account and it will be his commercial domicile which will form the guiding principle as to his immunity from capture or otherwise, of his goods by the belligerent.

APPLICATION OF THE DOCTRINE—All persons domiciled in the enemy country are treated as having been tainted with enemy character, even though they might have been neutral by nationality. As regards neutrals, if a neutral, after the commencement of war, continues to reside in the enemy country for the purposes of trade, he is considered for all commercial purposes as adhering to the enemy and cannot claim the privileges of neutrality.

But an enemy character which is based on Domicile is merely provisional and temporary. If a man though residing in and carrying on business in that country on the outbreak of war transfers his trade to some neutral territory, he will be divested of his enemy character.

Where a person who is domiciled in enemy country has a trading house or any business in a neutral country, his interest will be deemed to be enemy

interest, and his property enemy property, as the enemy domicile will taint his entire property. But where a person domiciled in a neutral country has a house of trade in the enemy country he will be deemed to have an enemy character, and it will attach itself to his property in the enemy country.

Lord Stowell in the case of the *Harmony* held that time was the most essential ingredient in determining domicile. "If a man came to a belligerent country at or before the beginning of the war it was reasonable not to bind him too early to an acquired character, but if he continued to reside during a good part of the war and contributed by payment of taxes etc. to the strength of that country, then he would not be allowed to plead his special purposes against the rights of hostility." Emphasis must be laid on two elements, time and occupation, with a preponderance on time.

ENEMY PERSONS FOUND WITHIN THE TERRITORY OF A BELLIGERENT—By virtue of the customary law nationals of a belligerent country found within the territory of the enemy country are allowed to depart freely within a period reasonably sufficient, but a belligerent nation may intern such foreign subjects during the continuance of war. During the last war large number of Germans, men, women and children, were interned in England and their liberties were in many respects severely restricted under the Defence of the Realm Regulations passed between 1914 and 1918.

WAR AND ITS EFFECTS—Persons of enemy nationality cannot recover debts from nor can they

sue the other state during the war. Contracts are immediately dissolved and suspended and new contracts are forbidden. Commercial transactions between individuals of belligerent states are only permitted under exceptional circumstances.

A corporation is of enemy character if it is incorporated and carries on business in an enemy country. Great Britain during the last war stated by Proclamation that enemy character attached to the companies carrying on business in enemy country wherever they are incorporated.

ENEMY GOODS—The leading case is the case of *the San Jose Indiano*. This case illustrates the principle that the character of the goods depends primarily on the character of the owner having regard to his domicile.

In the case of *The Sally* it was held that since the cargo on board a neutral vessel was intended for an enemy country, to be consumed by enemy population, it was enemy property.

Goods intended for enemy comsumption if transferred to a neutral in the course of a transit can be captured.

In the *Hoop case*, it was held that an enemy subject having a license is not debarred from suing. An enemy can always be made defendant. Internment as a civilian prisoner does not deprive the internee of his capacity to sue. Enemy subjects resident in allied or neutral countries are entitled to resort to the courts.

An enemy alien wherever resident can prosecute before the Prize Court any claim which is alleged to be based on any protection, privilege or relief under the Hague Convention of 1907.

Private property of the enemy may be captured on the sea, but a licence to trade may be given by the Crown to enemy subjects.

ENEMY CHARACTER OF THE GOODS IN GENERAL:— This is determined according to England, the United States, Japan, Holland and Spain by the principle of domicile, and by the principle of nationality according to France, Italy, Russia, Germany and Austria. Furthermore, possession of a house of trade or an agricultural state in an enemy country or the conduct of a privileged trade will confer enemy character upon any property connected with it. The residence of the owner will be of little value in determining such character.

In *Societe Anonyme Belge des Mines d' Algustrel* (Portugal) v. *Anglo-Belgian Agency* (1915. 2 Cansult. 409), the plaintiff company was incorporated under the laws of Belgium and had its registered office at Antwerp. But when the city was occupied by Germany, the company's business was closed and all the books connected with it were removed to London, from where the business was carried on, although the chairman remained in Antwerp. It was held that since the whole of Belgium was not in enemy occupation the company was not an enemy company. But on the 14th. of Sep. 1915 by proclamation, the term 'enemy' was extended to any incorporated

company carrying on business in any territory for the time being, in any hostile occupation. *Central India Mining Co. v. Societe Coloniale Anversoise* (1920) 1 K. B. 753.)

According to Pitt Cobbett in *Leading Cases on International Law* (p. 30, Vol II Ed. IV,) "the same principle which determines the nationality may be applied to determine the domicile. The domicile of a corporation is the place where the brain which controls the operation of the company is situate." To quote the language of Dr. E. J. Schuster K. C., "The brain of a corporate body is situate in the place, where those who direct its policy and its mode of action, are accustomed to meet and form their resolutions. Whether those present are designated by the name of directors is immaterial. There may be nominal directors in one place and so-called local directors in another place. But if these local directors have merely to follow orders given by the directors residing at the place of the head office, they do not constitute the brains of the company."

In Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd. of Great Britain (1916, 2A. C. 307), Lord Parker enunciated the following principles :—

(1) A company incorporated in the United Kingdom is a legal entity, a creation of law with status and capacity which the law confers. It is not a natural person with mind and conscience. It can neither be loyal nor disloyal. It can neither be a friend nor an enemy.

(2) Such a company can act only through agents properly authorised and so long as it is carrying on business within this country (England) through agents so authorised and residing in this or a friendly country, it is, *prima facie*, to be regarded as a friend.

(3) Such a company may however assume an enemy character. This will be the case if its agents or the persons in *de facto* control of its affairs, whether authorised or not, are resident in enemy country, or wherever resident are adhering it to the enemy or taking instructions from or acting under the control of enemies.

(4) The character of individual share-holders cannot of itself affect the character of the company.

The determining fact is whether after eliminating the enemy share-holders, the number of remaining shareholders is sufficient for the purpose of holding meetings of the company or appointing directors or other officers. In this case the secretary, even if it were held that he had been fully authorised to manage all the affairs of the company and to institute all the legal proceedings on its behalf, had only one share out of 25 thousand, and was the only share-holder who was not of enemy nationality.

The secretary however, was without authority and had to depend upon directions of enemy share-holders or subsequent ratification of his acts by them.

It was also held in this case that—(i) A company registered in the United Kingdom but carrying on business in the neutral country through agents properly authorised and resident here

(in the United Kingdom) or in a neutral country is *prima facie* to be regarded as a friend but may, through its agents or persons in *de facto* control, assume an enemy character.

(ii) A company registered in the United Kingdom but carrying on trade in an enemy country is an enemy.

ENEMY TERRITORY—(1) Temporary occupation of the territory of a friendly power would not invest the said territory or its inhabitants with an enemy character.

(2) Temporary occupation of hostile territory by a friendly power will not divest the territory nor the inhabitants of the enemy character.

Where however, the territory has been conquered and appropriated or ceded, the soil and the inhabitants thereof are invested with the character of friend or enemy as the case may be, according to the character of the conquering or annexing state. But so far as commerce is concerned such territory and the inhabitants thereof, while the territory is under military occupation, are to be deemed hostile in character, but occupation of hostile territory by the force of a friendly power would not divest it of enemy character for commercial purposes.

EFFECT OF WAR ON TREATIES AND OTHER ENGAGEMENTS—Pitt Cobbett in analysing the case of the Society for the Propagation of the Gospel in Foreign Parts v. The Town of New Haven and Wheeler (8 Wheat. 464), states that the following points were laid down:—

(1) Private rights acquired or confirmed by treaty will not be divested by subsequent war between the parties.

(2) Treaties which stipulate for permanent rights or which purport to be perpetual or contemplate a state of war, do not become inoperative on the outbreak of war and are at most suspended so long as war lasts, and they revive when there is peace, unless there is a contrary agreement.

(3) Barring these two exceptions, treaties contracted between the belligerents before the outbreak of war come to an end, when war has broken out.

(4) Great international agreements are binding.

CHAPTER XVII

RULES RELATING TO WARFARE

All means of warfare are directed to the attainment of one object only viz., the enemy state is to be overpowered by all legitimate means. Emphasis must, however, be laid on the word 'legitimate'. *The legitimate methods* are:—

(i) Combatants may be wounded but combatants who are sick and wounded must not be killed. This is embodied in Article 23 of the Hague Regulations.

(ii) Quarter must be given provided that the soldiers did not continue to fight after hoisting the white flag.

(3) The use of such instruments of destruction as cause unnecessary pain and injury is forbidden.

(4) Wells, rivers, and pumps from which the enemy draws drinking water must not be poisoned.

(5) Secretive or treacherous methods of killing are forbidden i. e. combatants must not hire assassins to assassinate enemies or individuals.

(6) Dum-dum bullets are forbidden.

(7) Non-combatant members of armed forces may not be killed or wounded but may be captured.

(8) Private enemy individuals should not be killed or wounded if they behave well; but they should not incite people to organise opposition to the enemy. If they do so they will be treated as war criminals and summarily executed.

(9) Important heads of enemy state may be captured.

Any new and dreadful weapons or methods of warfare may be used, if they are confined to military operations and are not used for terrorising or killing the civilian population. When such weapons cannot be employed without causing unnecessary suffering they are tabooed. Poisoning of wells is distinctly prohibited under Article 23 which prohibits poison and poisoned weapons. It is alleged that the Germans in the last World War, in the South West African campaign, poisoned the well in January 1916 without any warning.

The water supply of a beseiged place may well be stopped and the poisoning of the source of supply may be defended with regard to a beseiged place only.

Quarter must not be refused but when an army continues to fire, it may be refused. Quarter may also be refused to show a sense of disapproval for the violation of the rules of war. If in granting quarter vital danger to the captor is involved, it may be refused according to Oppenheim, but this is repudiated by Westlake and Hall.

Liquid fire and liquid gas are also prohibited. The Germans were charged with having used them

against the French in 1915, at Verdun; but its use was not proper since it caused unnecessary suffering.

General devastation can be excused provided that provision is made for the safety and maintenance of the population in the affected area.

A national of an occupied territory cannot be compelled to serve in enemy ranks.

Indiscriminate bombardment without any military objective is unlawful. Pillage is disallowed. Art treasures and other things obtained through pillage are illegal.

ESPIONAGE—By Article 29, a spy has been described as a person who acts clandestinely or on false pretences and obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party. Captured spies are not to be treated as prisoners of war.

CHAPTER XVIII

THE LAWS OF WAR WITH REGARD TO ENEMY PROPERTY AT SEA

The character of a vessel is proved by the flag she flies. In most cases the flag she flies and her papers of registration, are conclusive evidence as to her character. But at the time of war the belligerent ships can disguise themselves in any way they please and fly a false flag as long as they run under the true one before embarking on actual acts of hostility. A belligerent man-of-war would be perfectly justified in ascertaining the true nature of another ship which is flying a neutral or even a friendly flag. This is called the *Right of visit and search.* A neutral ship can in the exercise of this power of the right of visit and of search, be visited, her papers searched or commander examined and crossexamined. The goods she is carrying on board may also be searched in order to ascertain their true destination and character. This is in fact a right of self-preservation and no neutral power has the right to take any exception to it so long as the power is exercised properly.

The public as well as the private vessels of the enemy may be attacked in their own ports, and on

the high seas as also in the ports and harbours of the attacking power, but never in neutral ports and waters.

The *exceptions* are :

(1) The hospital ships and ships carrying *bona fide* civilian passengers;

(2) The vessels employed in religious, scientific or philanthropic missions ;

(3) Cartel-ships, or ships which are engaged in services connected with the exchange of prisoners of war ;

(4) Enemy ships protected by licenses ; and

(5) Fishing smacks.

These exceptions are based upon the principle that the ships so excepted from the operations of capture and confiscation, do not in any way contribute to the military strength of a belligerent. If, however, a ship while flying a Red-Cross flag actually carries contraband of war or soldiers, an enemy man-of-war would be perfectly justified in seizing such a ship. So, as long as these excepted vessels perform the duties within the strictest limits, they can plead exemption from capture.

The Hague Convention of 1907 conferred an incomplete and limited immunity on three classes of merchantmen:—

(a) Those which are found in an enemy port at the commencement of hostilities ;

(b) Those which enter such a port ignorant that war has broken out, but such ships must be

shown to have left their last port of departure while peace still existed ; and

(c) Those which are encountered on the high seas in the same condition of ignorance about the declaration of hostilities.

The enemy cannot confiscate such ships, but he can detain them till the termination of war or requisition them with compensation. In the third case destruction is allowed as an alternative, but indemnity must be paid if such vessles are destroyed.

ENEMY PROPERTY ON THE SEA:—The private property of an enemy, taken at sea, is generally liable to capture and confiscation. According to the British view, the right to take enemy property as prize, is not limited to capture on the high seas. It was laid down in the Roumanian (1916, 1A. C. 124), "Enemy goods on British ships, whether on board at the commencement of hostilities or embarked during hostilities, were always and still are liable to be seized, as prize either on high seas or in the ports or harbours of the realm. Enemy ships, however,in a British port at the outbreak of war, may be detained but not confiscated." (The Blonde 1922, 1 A. C. 313.)

Private non-contraband property belonging to the enemy and carried in neutral ships is immune from capture.

Hospital ships, cartel ships, ships engaged exclusively in coastal fisheries and small boats engaged in local trade, are immune from capture. In the case of the *Berlin* (1914, 265) the British Prize Court condemned her though she was a German sailing

cutter carrying fish and materials for curing and was seized by a British cruiser five hundred miles from her home-port and eighty miles from the coast of Scotland. It was stated that the *Berlin* did not conform to the requirement of "small boats engaged in local trade" in as much as, her size, the nature of her equipment, as also her voyage went to prove that she was a deep sea-going vessel and was carrying on commerce which formed part of the enemy trade. Such ships must not be engaged in any unlawful work.

At the Hague Conference of 1907 (Convention II of 1907, Articles 1 and 2), it was decided that the postal correspondence of neutrals or belligerents, whatever its official or private character, found on board a neutral or enemy ship, is inviolable. If the ship is detained, the correspondence is to be forwarded by the captor with the least possible delay. But articles conveyed by parcel-post or negotiable instruments and securities do not come within the exception.

In a certain case the British Prize Court condemned as contraband several thousands of postal parcels containing rubber posted to Germany by neutral mail. This was dishonestly taking advantage of the immunity of postal correspondence and the ship was rightly condemned. Propaganda leaflets and all papers harmful to a belligerent interest may be captured by him.

CHAPTER XIX

WARFARE ON THE SEA

FREE SHIPS, FREE GOODS, ENEMY SHIPS, ENEMY GOODS—The *Consolato del Mare* in the 15th. century set forth certain rules on naval warfare, which laid down that a belligerent would be within his rights in seizing and appropriating all enemy ships and goods. But if the ship or the goods were neutral, a different set of rules would come into existence.

An enemy ship might always be appropriated but neutral goods thereon must be restored to neutral owners. Similarly enemy goods on neutral ships might be appropriated but neutral ships were exempt from capture. But unfortunately nations did not accept these rules. The Netherlands, Spain and England never accepted them. France, in 1584, laid down in clear terms that neutral goods on enemy ships as well as neutral ships carrying enemy property, should be appropriated.

During the Crimean War matters came to a head. Great Britain declared that she would not seize enemy goods on neutral vessels, while France held that she could not take neutral goods on enemy vessels. The Netherlands insisted upon the principle that *the flag covers the goods*. In other words, enemy

goods on neutral vessels were exempt from capture, whereas neutral goods on enemy vessels were to be made subject to appropriation. During the 18th and 19th centuries and upto the Crimean War, England had accepted the rules of Consolato del Mare but thereafter Great Britain declared that she would not seize goods on neutral vessels, while France held that she could not and would not, take neutral goods on enemy vessels.

After the peace was concluded, the Declaration of Paris (1856) formulated *four* clear-cut principles:—

(1) That privateering is to be abolished;

(2) That neutral flag covers enemy goods with the exception of contraband of war.

(3) That neutral goods, except the contraband of war, are not liable to capture under the enemy flag.

(4) That blockades, to be real and binding, must be effective.

Here we are concerned only with the second and third principles. These principles have been universally recognised as good law and the Declaration of Paris is a recognised part of the Law of Nations.

It should also be borne in mind that the neutral flag covers enemy goods so long as they are under it. According to the British practice, when enemy goods shipped in enemy vessels before the

outbreak of war, are transhipped into neutral vessels, the neutral flag does not protect them.

"By the extension of the term "contraband" to cover all commodities of use, direct or indirect, in war, by the extension of the doctrine of continuous voyage, and by the presumption of hostile destination, the rule that the neutral flag covers enemy goods except contraband of war, has been almost wholly nullified". (Pitt Cobbett *Leading Cases*, Vol. II).

TRANSFER OF SHIPS:—A ship which has been purchased by a neutral power in good faith becomes neutral. In the case of the *Ariel* (11 Moo. P. C. 119 1857). it was held that the sale of a ship absolutely and *bona fide*, by an enemy to a neutral *imminente bello* or even *flagrante bello* is not illegal, nor is such a vessel necessarily condemned, even though part of the purchase money is unpaid. But in Sechs Geschwistern it was held that the circumstances will be examined with great thoroughness. It was held that the property so transferred must be *bona fide* and absolutely transferred, that there must be a sale divesting the enemy of all further interest in it and that anything tending to continue his interest vitiates a contract of this description altogether. The unratified Declaration of London laid down that the transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, was exposed.

During the Crimean War of 1854, England and France declared that they would not depend upon privateers. The British system seems to approve privateering which was abolished by the Declaration of Paris of 1856.

SUBMARINES—The submarine is a vessel used for military offence, and comes under the general definition of a warship.

Submarines were extensively used during the last World War. The Germans employed the submarines for the destruction of the battleships, merchant-vessels and neutral vessels without making any provision for the crew and the passengers and without arranging for their safety. Before the World War, it was the practice of the States that merchant-vessels could not be destroyed without warning. It was also the practice that the commander of the destroying vessel must make proper arrangements for the safety of the crew and the passengers. The Hague Convention of 1907 and the Declaration of London laid down these principles. But the *Lusitania* carrying 1200 passengers was sunk by the German submarine and the American Government protested with vehemence. The German reply can be summarised as follows:—

(1) The rules were formulated when submarines were hardly dreamt of.

(2) The submarines cannot afford to give shelter to non-combatants and passengers. Nor can they afford to spare an additional crew to land passengers in places of safety.

(3) They could not also give a warning to enable the crew and the passengers to take to the life-boats because of the dangers to which the destroying submarines would be exposed from the approach or presence of enemy warships or from destruction by means of the guns carried in the ship itself.

(4) Lastly, they justified the submarine activity on the ground of military necessity and as a legitimate measure of reprisal against the enemy for various illegal acts. The British blockade particularly was regarded as illegal.

Prof. Hall speaking about the German submarines during the last World War says,—"Their chief defect was their incapacity to provide for the safety of the persons on board the vessels which they sank, as well as the difficulty at times of distinguishing the character of the vessels they attacked."

See—Oppenheim, Hall, Lawrence.

The transfer of an enemy ship, other than a war-ship, to a neutral is not invalidated merely by the fact that it was made in contemplation or even during the subsistence of war, provided that the transaction is not collusive but is absolutely fair and above board. Such transfer, however, is bad and inoperative, if it was made while the ship was in a blockaded port or when the vessel was in transit; unless possession was taken by the purchaser before capture or unless the vendor is shown to have retained any interest in the vessel, or there was any agreement to reconvey her after the termination of the war.

Articles 55 and 56 of the Declaration of London of 1909 run to the same effect.

CONVERTED MERCHANTMEN—At the Second Hague Conference of 1907 in Convention VII, it was settled that no converted vessel can have the status of a war-ship, unless she is placed under the direct authority, immediate control, and responsibility of the Power whose flag she is flying. Such a vessel must bear the external marks which distinguish the war-ships of her nationality. Her Commander must be in the service of the State and must be duly commissioned. Her crew must be subject to military discipline and in state service, and the conversion of the vessel must be announced as soon as possible in the list of ships by the belligerent.

The next question is where can the conversion take place? Opinions differ. Some Powers claim that they could convert such vessels anywhere. During the

World War, England made it known to Germany and America that if German vessels after leaving American ports were converted into men-of-war on the high seas, U. S. A. would be accountable for the loss which might ensue to the British commerce. The generally accepted view is that conversion can take place only in the national ports or in the ports of a friendly power.

DEFENSIVELY ARMED MERCHANT VESSELS—The British Admiralty announced during the World War that it was their intention to lend guns and ammunitions to British merchant vessels for the purpose of defending them. It should be noted that this action of the British Government. was resented with all vehemence by the Government of Germany and rightly so. It is difficult to draw a distinction between offensive and defensive acts. Under the cloak of defensive action a merchant-vessel might attack a warship. Just as the British Government protested against the use of submarines by the Germans, so the German Government protested with equal propriety against the so called defensively armed merchant vessels.

PRIVATEERS are defined as vessels owned and manned by private persons but empowered by a commission from the State, called a Letter of Marque to carry on hostilities at sea. The commission could be revoked for bad conduct on the part of the privateer and other means were taken to secure that she did not violate the laws of War.

(2) All requisitions must be either for the army of occupation or for the immediate needs of such army and must be paid in cash or a proper receipt should be given. Payment is to be made as soon as possible.

(3) Soldiers may be billetted on individuals, but such persons must be either paid in cash or a receipt should be furnished.

(4) Contributions may also be levied.

Articles 49 and 51 enact that such contributions must not be excessive, i. e., the inhabitants must not be bled white. They are to be levied for the sole purpose of getting money to pay for requisitions. Every one contributing must be given a receipt.

See—Oppenheim, Hall.

CHAPTER XXI

AERIAL WARFARE

The Hague Declaration IV. of 1899 laid down, that the launching of projectiles and explosives from baloons or by other methods of a similar nature, is prohibited. By Art. 25 of the Hague Regulation of 1899, an attak or bombardment of towns, villages and buildings which are not defended, has been prohibited. Hague Convention IV, Art. 23 (e) forbids the dropping of arms or materials of a nature to cause superfluous injury on defended places.

The moot point therefore is, what is meant by a defended place. Any city or any town that has got munition factories, military stores, barracks, railway junctions, military or naval establishments, may bring such a place under the category of a defended place. Military objectives are military works or such establishments, as a recentres for collection of arms and ammunition.

The definition of a defended place is too wide, because only a portion of a big town may be used for naval or military establishment, but that would not warrant aerial bombardment of the whole town. But aerial bombardment upon direct military objectives is justified, and if in the course of such bombardment of military objectives, the interests of civilian population suffer, by virtue of the close proximity to

CHAPTER XX

OCCUPATION OF ENEMY TERRITORY

Occupation means invasion plus taking possession of enemy territory for the purpose of holding it, even though temporarily. When an enemy occupies a territory he sets up some sort of government and administration, whereas in the case of invasion he does not do so. As soon as the occupant has withdrawn his forces or his forces have been driven back, occupation has ceased. Art. 42 of the Hague Regulations enacts that territory is considered occupied when it is actually placed under the authority of a hostile army and applies only to the territory where the authority is established. The occupant takes over charge of the administration of the area.

The *essential features* of occupation are :—

(1) The inhabitants are under his military control and have to render obedience to his commands.

(2) Articles 23, 44, and 45 of the Hague Regulations expressly enact that the enemy is prohibited from compelling the inhabitants to take part in military operations or give information concerning the army of the other belligerent or his means of defence.

(3) He may compel the inhabitants to take the oath of neutrality and not of allegiance, because the old Sovereignty is not displaced.

(4) He may make requisitions and demand contributions.

(5) He may compel the inhabitants to render services not directly connected with the war.

(6) He may not deport the inhabitants to the country of the occupant to compel them to work there.

(7) He may collect the ordinary taxes, dues and tolls imposed for the benefit of the State by the legitimate Government.

(8) No general penalty, pecuniary or otherwise, may be inflicted on the population for the acts of the individuals unless they are collectively responsible.

(9) Civil courts will function but criminal law and procedure may change.

(10) The courts will not pronounce judgments in the name of the country in occupation. They will continue to pronounce them in the name of the legitimate Government (old Government).

REQUISITIONS AND CONTRIBUTIONS—The rules governing the requisitions and contributions are:—

(1) According to Article 52, requisitions may be levied upon inhabitants as also from the Municipalities. They are levied for the purpose of supplying the needs of the army of occupation and not for any other purpose.

cities, towns, villages, dwellings, or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment with regard to the danger thus caused to the civilian population.

(5) A Belligerent state is liable to pay compensation for injuries to persons or to property caused by the violation of the provisions of this article by any of its officers or forces.

INTERNATIONAL RADIO CONVENVION—The Washington Convention of 1927 with respect to International Radio Convention which was signed by the delegates of 78 governments, laid down, that they agreed to propose to their legislatures to legislate upon necessary measures in order to give effect to the resolutions arrived at the Washington Conference. Amongst other things it was provided in the said Convention, that unless a government permitted, there could be no private radio transmitting stations. The radio emissions and allocation and use of frequencies were also devised.

See Oppenheim—*International Law*; Spaight's articles in British year Book 1923-24 and 1924

CHAPTER XXII

PRIZE COURTS

All maritime captures must be adjudicated upon by a competent Court and for this purpose Prize Courts are established in each of the belligerent States. The functions of the Courts are (i) to enquire into the cases of maritime capture, (ii) to condemn the ships or to restore them to the rightful owner, according to the facts and circumstances of each individual case. Such courts possess an international character.

It has been universally admitted that a Prize Court connot be established in a neutral territory. (The Appan case). Prize Courts are bound by the Order of the King-in-Parliament and not by an Order of the King-in-Council. Prize Courts are to administer International Law, but where there is a conflict between International Law and the National Law, the latter (i. e., the National Law) will prevail.

Prize Courts are bound by the Kind in Parliament, but are not bound by an order of the King in Council which is contrary to the International Law. But the Court cannot entirely brush aside executive orders. Such executive orders as soften the rigour of

such military objectives, such aerial bombardment would not, on that ground, be condemned. It is however, the bounden duty of the airmen to bombard with reasonable accuracy, so that the civilian population or the property belonging to the civilians may not be injured.

Air raids must not be made in order to terrorise the civilian population.

Indiscriminate dropping of bombs in order to freighten the civilian population cannot be permitted according to the civilised canons of International Law. It is the bounden duty of a neutral power to enforce the rule that no fight on the air between belligerents must take place over neutral territory and a neutral state must prevent hostilities on neutral territory.

The questions that have not been decided are whether the passage through the neutral territory of a belligerent aircraft is tantamount to a breach of the neutral power's territorial sovereignty, and whether there is a duty cast upon the neutral states to prevent such passage.

Several states e. g. England, U. S. A., France, Italy, Japan and Holland, under a resolution passed by the Washington Conference, appointed a commission, and two sets of rules were prepared, one for the control of radio in time of the war, and another for aerial warfare. The following principles were laid down in the report.

(1) Arming of private aircraft even in self-defence is absolutely forbidden.

(2) Occupants of disabled aircraft, seeking to escape through a parachute, are not to be attacked during their descent.

(3) Aerial bombardment must not be used for the purpose of terrorising the civilian population, or for damaging private property of a non-military character, or for injuring non-combatants.

Art. 24 summarises within a short compass what places may be bombarded and what may not be:

(1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object, the destruction or injury of which would constitute a distinct military advantage to the belligerent.

(2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition or distinctively military supplies; lines of communication or transportation used for military purposes.

(3) The bombardment of cities, towns, villages, dwellings or buildings not in the immediate neighbourhood of the operations of land forces is prohibited.

In cases where the objectives specified in paragraph 2 are so situated, that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

(4) In the immediate neighbourhood of the operations of land forces, the bombardment of

could say whether its decisions were based on a due consideration of international obligations or the binding nature of the Act itself".

It is appropriate to quote a passage from the judgment of Lord Stowell "I trust that it has not escaped my anxious recollection for one moment, what it is that the duty of my station calls for from me viz., to consider myself as stationed here not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference, that justice, which the Law of Nations holds out, without distinction, to independent states.....The seat of judicial authority is, indeed, locally here, in the belligerent country, according to the known law and practice of nations; but the Law itself has no locality." (Lord Stowell in the judgment of *the Maria.*)

Prize Court cannot be established in a neutral territory. It may be established in the territory of an ally.

During the last World War Lord Parker and Sir Samuel Evans were the great judges of the British Prize Courts. They tried to give effect to the principles of International Law, when not at variance with the State Law. They were not deterred by Orders-in-Council, which are not law.

The German Prize Court decisions are short and abrupt. The facts are stated; almost little or no reasoning is assigned for the decision, and the conclusion is arrived at apriori way. But, on the other

hand, the British Prize Court decisions, are very lengthy and elaborate. All the points are discussed at great length, and it has been well said by an eminent international lawyer, that time may come when such decisions will be regarded as precedents in International Law.

CHAPTER XXIV

BLOCKADE

According to Hall, blockade, in times of war, consists in the interception, by a belligerent, of access to a territory or to a place which is in the possession of his enemy. As it is obviously a mode, by which severe stress may be put upon the population subjected to it, through the interruption of communication with the external world which it entails, it is an invariable concommitant of all warlike operations, by which control is gained over avenues through which such communication takes place.

The Essential features of a Blockade are:—

(1) It must be duly established.

(2) It must be effective.

(3) It must be duly maintained in the sense of being enforced continuously and against all vessels.

the Crown rights in favour of the enemy or neutral, will be binding on them.

Oppenheim states, *International Law* Vol. II, "The fact that the British Prize Courts are bound to apply an Act of Parliament, shows clearly that the law which they apply is Municipal law although it is in substance International Law, which has been adapted by Municipal Law, and not been abrogated by an Act of Parliament or by an Order in Council in mitigation of the rights."

International Law is applicable to such Courts. It is a primary function of such courts to decide cases between two or more states in conflict over the capture of ships, of the goods or the crew, or all of them together.

Pitt Cobbett in his book *Leading cases on International Law* criticises this view in the following words, "It matters not to a Prize Court whether the law which it applies had been adopted by the Municipal Law or not. As Lord Parkar insists, it is equally binding on the enemy and neutral parties to the litigation alike. Municipal law is not so binding, because in very rare cases the court is bound to apply an act of Parliament contrary to International Law, (since it derives its authority from Parliament) it does not follow that it applies Municipal Law in every case. The Prize Courts of most of the States profess to administer International Law. They derive their jurisdiction over foreign subjects not from the municipal authorities which are powerless to confer it, but from the consent of nations.

The leading case on the question of Prize Court is the case of the *Zamora*. Lord Parker in this case stated that the Prize Court rules derive their force from the orders of His Majesty in Council. These orders are expressed to be made under the powers vested in His Majesty by virtue of the Prize Court Act of 1894. It confers on the King-in-Council power to make rules relating to the procedure and practice of the Prize Courts. *But the order of the King-in-Council is not binding in order to lay down or alter the law to be administered by the Prize Courts.* The king is not entitled to do it by invoking Royal Prerogative. It was also stated in the said judgment that the Prize Court though undoubtedly a municipal court, nevertheless administers International Law, and "must ascertain and give effect to a law which is not laid down by any particular state, but originates in the practice and usage long observed by civilised nations in their relations towards each other, or in express international agreement."

A Prize Court would be bound by the Acts of Parliament, but "if the imperial legislature passed an Act the provisions of which were inconsistent with the law of Nations, the Prize Courts, in giving effect to such provisions, would, be no longer administering International Law. It would, in the field covered by such provisions, be deprived of its proper function as a Prize Court. Even if the provisions of the Act were merely declaratory of International Law, the authority of the court as an interpreter of the law of nations, would be thereby materially weakened, for no one

All the States are agreed that Blockade must be effective. It has been established by practice among many states that blockade must be continuously maintained. According to British practice, its validity, however, is not affected if there is temporary absence of the blockading squadron owing to the stress of weather, provided that the same position is resumed with due diligence immediately after. But if the blockading force neglects or is unable to maintain it efficiently, or strict impartiality is not maintained in regard to ships of all states blockade will be condemned to be ineffective.

As regards notice of Blockade, the British practice is that there shall be some sort of notice actual or presumptive. According to the French practice, in addition to the requirement of a general information and a declaration addressed to local authorities, a special indication is necessary.

THE CASE OF THE *Franciska*. In May 1854, the Franciska, a Danish vessel was captured by a British cruiser on a charge of having attempted to break the blockade of Riga. It was contended on behalf of the ship in the Prize Court that it was ordered to proceed to Riga only in the event of that port not having been blockaded, and the ship had no intention to break through the blockading squadron. The Court of Admiralty held that the plea of ignorance of the existence of the blockade could not be sustained in as much as the Captain was aware about this fact when she sailed form her last port. The Privy Council however, held on another ground that the blockade had

been rendered invalid, in view of the fact that while belligerent merchant vessels were allowed to come to the blockaded ports, neutral vessels were excluded.

The propositions laid down:—

(1) The declaration of blockade is an act of Sovereignty.

(2) The forces employed in the blockade must be adequate.

(3) Blockade cannot be rendered infructuous because of the fact that the blockading force was stationed at some distance from the place blockaded.

(4) The acid test is whether the blockading force is in a position to cut off all communications with the place blockaded. A neutral power has a right to carry on all trades open to it in time of peace except trade in contraband goods and with the place blockaded.

(5) Egress and ingress must be stopped.

(6) The notice of the blockade must correspond to the actual facts, i. e., must acquaint the different neutral powers with the actual geographical limits of the blockade.

(7) Any general restrictions in favour of belligerents to the exclusion of neutrals would render the blockade inoperative

In the case of the *Frederick Molke*, which was a Danish vessel captured by the British, when coming out of the port of Havre which was blockaded by the British during the War between Great Britain and France, the ship's real destination was the Port of Havre, though ostensibly she was sailing for

Copenhagen. (Denmark was neutral in the war). The Captain of the Danish ship was apprised of the existence of the blockade from a captain of a British ship. Lord Stowell, who decided the case, held that the ship and the cargo were alike liable to condemnation, as it appeared abundantly clear that the ship had been duly warned.

The case of the *Panagia Rhomba* during the Crimean War between Britain and Russia in 1855:— This vessel sailing under- neutral Greek Flag was going to Odessa, a port blockaded by the British Government. It was held that both the ship and the cargo must be condemned in as much as, the owners of the cargo were affected with the illegal act of the master.

The Declaration of London reaffirmed the rule laid down in the Declaration of Paris, that a blockade, in order to be binding must be effective. It also added that it must be declared and notified. Article 9 of the said Declaration requires that the declaration must be issued by a belligerent Government or by any Commander of the naval force acting on behalf of the State. It must set forth the date when the blockade begins, the geographical limits of the coast-line of the blockade and the period during which neutral vessels may come out. Article 15 states that a knowledge of blockade is presumed on the part of every neutral vessel which left a neutral port after there was the notification of the blockade to the power concernad and after the lapse of sufficient time for the authorities to publish it. But this

presumption is liable to be rebutted. Article 17 of the Declaration sets forth that a vessel found guilty of a breach of blockade is liable to condemnation. The cargo is also condemned unless it is proved that at the time of the shipment of the goods, it was not known that the ship intended to break through the blockading line.

Article 17 of the Declaration of London lays down that neutral vessels may not be captured for breach of blockade, except within the area of the operations of the warships detailed to render the blockade effective. During the last World War the scope of the blockade was extended in order to meet the exigencies of the situation. Germany in 1915 issued a decree whereby the water surrounding the British Isles was declared a war-zone, meaning thereby, that all enemy vessels could be sunk without warning. This however, was not in the strict sense blockade. It was also not directed against neutral trade with the enemy.

The British Government immediately passed retaliatory orders to detain and take into her ports, ships carrying goods of presumed enemy destination, ownership or origin. This could not also be termed a valid blockade. The British Order was however, supplemented by a fresh Order to the effect that vessels of enemy destination would be required to discharge their goods in a British port and that vessels of neutral destination would be required also to do so. In this connection the two cases, namely, The Stigstad (1919 A. C., 219) and the Leonora (1919 A. C. 974) are of importance. The Leonora was a Dutch

vessel chartered by a Swedish company. It was captured by a British cruiser and taken to a British port for adjudication. Sir Samuel Evans in delivering the judgment of the court, stated that the Order in Council, by virtue of which, the ship was captured, did not amount to the Declaration of Blockade to neutral ports. It only stopped enemy's maritime trade through adjacent neutral ports. The Order in Council was retaliatory in character, and aimed at the crippling of enemy's commerce. Lord Parkar also held the same view. He also maintained that the Order in Council did not forbid carriage of the goods altogether. The neutral vessels might carry goods at their own peril, and that peril could be avoided by calling at the appointed port or ports.

Commenting upon the German Orders and the British retaliatory Orders in Council Sir Arnold Richards in the *British Year Book of International Law* (1920-21) states, "The right claimed is of an extreme importance as it enables belligerents to override the whole of the protection which the common Law of Nations and treaties have given to neutral trade, and if retaliation be a legal right, neutrals can have no cause of complaint."

CHAPTER XXV

RIGHT OF ANGARY

It is the right of state in time of war or public danger to requisition for its own use, ships, aircrafts, rolling stock and other means of transport, belonging to the belligerents or neutrals lying within its jurisdiction. The right does not extend to personal services of the crew if they are foreign nationals. It may be exercised in time of urgent public necessity; but the owners must be fully compensated for the use of the property. (See Mr. Bullock's article in the *British Year Book* 1922-23).

The leading cases are, the (*Zamora* 1916 2 A. C. 77;) the *Canton* (1917) A. C. 102, *Commercial States Company v. The Board of Trade* (1925 1 K.B. 97).

Angary is derived from the designation of the Royal Courier Service in ancient Persia, the distinctive characteristic of which was to impress horses. Angary in Roman Law was confined to land transport only. In modern times it gives a state an unquestioned right over all property situated within its territorial limits. Angary does not mean requisition of a ship with the sole object of destroying her. According to Phillimore it can only be exercised subject to the pay-

ment of freight in advance, and on condition that the owners of the goods or the vessel are indemnified for all damages caused by the interruption of the lawful gains, and from possible destruction of the things they carry. But Phillimore never suggested the possibility of requisition being made with the sole object of destroying the ships requisitioned in the exercise of the right of Angary.

The Duclair incident during the Franco-Prussian War of 1871 when six British ships were sunk in the River Seine by the Germans in order to prevent the passage of French gun-boats, has been severely criticised by all the writers on International Law. Bismark justified the sinking of the British ships, when strong representations were made against the act by the British Government, on the ground of Angary and quoted a passage from Phillimore's book in justification of his conduct. But the British Government maintained, and rightly so, that Phillimore's passage could not be construed in the way in which it was sought to be done by Bismark.

The essential features of this Right are :—

(1) It is a right of the state to requisition foreign ships, aircraft and other means of transport which are urgently required for the purposes of transport and which are at the time of such requisition within the territorial jurisdiction of the State requisitioning them. But such requisitions can only be made in time of national emergency subject to the payment of full compensation.

(2) The services of foreign crew of the ships or aircraft cannot be requisitioned.

(3) The right cannot be exercised by a belligerent in military occupation of a territory.

(4) It cannot be exercised beyond the territorial limits.

(5) The neutrals may also exercise this right in the case of grave national emergencies.

(6) It is a right which belongs to every state i. e., it is a sovereign right.

THE EXERCISE OF THE RIGHT DURING THE LAST WAR—In the 20th century happened the case of the *Zamora*. In was a Swedish vessel which was seized by a British cruiser and brought to the British Prize Court for adjudication. At that time the copper from the ship was requisitioned. Lord Parker in delivering the judgment of the Privy Council observed, "A belligerent power has, in International Law, the right to requisition vessels or goods in the custody of its Prize Courts, pending a decision of the question whether they should be condemned or released, but such right is subject to certain limitations, namely, the vessels or the goods must be urgently required for use in connection with the defence of the realm." As it was not proved that the copper was urgently needed for national purposes, the Court decided that the order of requisition was not justified.

In 1915, Italy, though not at war with Germany, requisitioned 34 German vessels in her ports. The German Government had not a word to say in regard to this. In 1917 the Brazilian Government also

requisitioned over forty German vessels in her ports. In May 1917 the British Government requisitioned a number of Dutch merchant vessels. It should be remembered that this right cannot be exercised beyond the territorial limits of a State. The capture of the fleet *en masse*, in the exercise of this right, is doubtful.

Some hold that it is a belligerent right, while others maintain that it is a sovereign right. According to one school neutrals cannot exercise this right; while according to the other school, they can. According to the majority of European States, however, it is a sovereign right.

See—Oppenheim, and, Lawrence.

CHAPTER XXVI

THE DOCTRINE OF POST LIMINIUM

Professor Hall speaking about this doctrine says, "When a territory which has been occupied and a population which has been controlled by an enemy, comes again into the power of its own state, during the progress of a war, or when a state, the whole of which has been temporarily subjugated, throws off the yoke which has been placed upon it before a settled conquest has been clearly effected, or finally when a state or a portion of a state is freed from foreign domination by the action of an ally, before a conquest of it has been consolidated, the legal state of things, existing prior to the hostile occupation is re-established."

It is derived from Roman Law according to which the relations of Rome with a foreign state depended upon, whether or not, a treaty of friendship existed. If a treaty of friendship was not in existence, Romans entering a foreign state could be enslaved, and Roman goods appropriated. *Jus post limini* denoted that a Roman who was enslaved, should he ever return to the territory of Rome, became a Roman citizen once again, vested with all the rights which he possessed before, and property also reverted to him.

Upon this analogy individuals and property which had come in time of war under the charge of the enemy, returned under the sway of their original sovereign, and the persons whose property was appropriated whould get it back. There are however, certain limitations upon this doctrine. The legitimate acts done by the occupant cannot be subject to the doctrine of *post liminium*. If however he exceeded his jurisdiction and sold the propery, then such an act would be illegal and the State has the right to get it back from the appropriating state without compensation.

No cases of *post liminium* can arise when a territory is ceded to the enemy by a treaty or is conquered and annexed without cession at the end of war. If such territory reverts to its former state, the doctrine apparently would not be applicable. Again, when the whole of the territory of a state, which has been conquered and subjugated, regains its liberty and becomes the territory of an independent state, since the sovereign authority of the former power during the interregnum was at an end, the doctrine would not be applicable.

An enemy in occupation is entitled to levy contributions and the people in the occupied area may be called upon to pay contributions and other taxes, for example, the municipal dues; to such acts cannot be applied the doctrine of *post liminium*, alienation of immovble property would be deemed to be invalid as also acts done by the occupant in excess of his rights.

In regard to immovable property, the principle is clear that such property belonging to the state or private persons, even if got hold of by the enemy in occupation of the territory, would revert to the original owner unless the title of the enemy has been made complete by conquest or by treaty.

The leading case on the doctrine is the case of the Elector of Hesse-Cassel, the facts of the case may be briefly stated as follows:-

Hesse-Cassel, a neutral territory in the Franco-Prussian War, was invaded and occupied by French troops in 1806. The Elector himself was expelled. The Elector had however, before 1806, hereditary property and as mortgagee had invested a large amount of money by virtue of which he had a right over considerable mortgage properties within his domain.

The kingdom of Westphalia was formed by Napoleon by taking out almost the whole of Hesse-Cassel and making it part of Westphalia. Jerome Bonaparte was made king by certain treaties. Napoleon and Jerome entered into a compact by which it was agreed that the debts due to the Elector with respect to that portion of the Electorate which formed the kingdom of Westphalia, would be claimed by Jerome, but the money due to the prince or province could not be claimed by him and would be paid to Napoleon. As a result of this compact, purchasers, in good faith, purchased the hereditary domains, and money due to the Elector as debts was divided between Jerome and Napoleon, in accordance with the terms. The debtors, on paying partial,

amount, got full discharge from their liabilities from Napoleon. Thus Count Von Hahn paid to Napoleon a portion of the amount due to the Elector, but obtained a release for the whole, and his mortgage was thus deemed fully discharged.

In 1813, the Elector was restored to his dominions and the old treaties by virtue of which the Kingdom of Westphalia was formed fell to the ground. He then hastened to establish his claims in regard to the debts and mortgages on the doctrine of *post liminium.* His claims however, were set aside, in as much as, it was held that the doctrine of *post liminium* was not applicable to this case for, the conqueror had obtained a complete title by virtue of the treaties and therefore, though the Elector in 1813, was restored to his dominions, he could not rightfully assert his title to the property.

On the termination of the occupation by the enemy, the authority of the legitimate Government is restored. It should be borne in mind clearly that such acts namely, impositions of contributions and requisitions, as also collection of taxes, can never come within the purview of this doctrine.

CHAPTER XXVII

CONTRABAND

ABSOLUTE CONTRABAND—Contraband may be divided into two classes, absolute and conditional. Articles 22 to 24 of the Declaration of London of 1909 deal with the matter. Absolute contraband Includes all articles which are particularly adapted and primarily used for the purposes of war. Arms, ammunitions of all kinds, materials for making the same, articles of military and naval stores and the like are classed as absolute contraband. With respect to the destination and capture of such articles, it has been laid down that if their destination be for enemy territory or for territtry belonging to an area under the occupation of the enemy, they are liable to capture, whether sent directly or by transhipment or by subsequent land transport. It is not the destination of the vessels which is the determining factor. The acid test relates to the goods as Pitt Cobbett says, "If the vessel herself is genuinely bound for a neutral port and the goods are to be discharged there, the latter will be liable if the captor can show that they are ultimately destined for the enemy country; the transport being regarded as a whole."

CONDITIONAL CONTRABAND—Article 24 of the Declaration deals with the subject. of conditional

contraband. It enumerates articles capable of being used for purposes of war as well as peace. Food stuffs, forage and grain, clothing, gold and silver in kind or bullion, and vehicles of all kinds for use in war are examples of this kind of contraband. These are liable to capture and condemnation if shown to be destined for the armed forces of the enemy or the Government departments of the enemy state. Article 35 lays down that such articles are not liable to capture, except when found on board a vessel bound for a territory belonging to or occupied by the enemy or for the armed forces of the enemy They are however, to be captured if it is proved that they were to be discharged at an intervening neutral port unless the destination to that neutral port was a mere camouflage or the papers of the ship stated the destination falsely. When an enemy country has no seaboard such articles are liable to seizure and condemnation, if they are destined for the armed forces of the enemy though bound for a neutral port.

NON-CONTRABAND ARTICLES—Raw cotton, wool, silk, flax and hemp etc. were treated by the Declaration of London as non-contraband articles.

THE DECLARATION OF LONDON AND THE WORLD WAR—Non-contraband articles practically disappeared and almost all articles from a hundred ton-gun to lady's garter, as was humourously stated, became absolute contraband. Food-stuffs remained in the British and German list as conditional contrabands; but, later on, they were treated as absolute contraband. In 1916, coin, bullion, paper money, negotiable instruments, were all declared by Germany absolute

contraband. The British, French, and the Germans, in fact all the belligerents, in the last World War nullified the Declaration of London and all commodities, directly or indirectly or even remotely of use to the enemy in the prosecution of the war, were declared absolute contraband.

DOCTRINE OF CONTINUOUS VOYAGE--Pitt Cobbett states that it consists in treating an adventure which involves the carriage of goods in the first instance to a neutral port and thence to some hostile destination, as to be regarded for certain purposes only one transportion, with all the consequences which would attach if the neutral port had not interposed. In the case of the *Kim*, the *Alfred Nobel*, and the *Fridland*, Sir Samuel Evans stated that there was no reason why the doctrine should not be applicable to both absolute and conditional contraband. If it is right that a belligerent should be permitted to capture absolute contraband, why should he not be allowed to capture goods which though not absolute contraband become contraband by reason of the future destination to the enemy Government or its armed forces with the facilities of transportation by sea and by land which now exist.

The right of a belligerent to capture conditional contraband would be of a very shadowy value if a mere consignment to a neutral port were sufficient to protect the goods. The doctrine of continuous voyage and of transportation according to him had become part of the Law of Nations

at the commencement of the last World War. Since the cargoes of the three ships were really meant for Germany the goods were liable to be condemned.

THE CASE OF MASHONA—This was a British vessel which was brought in for adjudication during the South African War, while she was on a voyage from New York to various South American ports. Her condemnation was sought on the ground of trading with the enemy. Though the ship was released, yet in respect of her goods it was held that they were sent to a neutral port with the intention that they should be sent on to the enemy country, and therefore they were condemned.

Next is the case of the *Balto*, a Swedish vessel laden with leather at Boston and bound for Gothenburg. It was seized by a British cruiser. It was proved that the leather was either to be forwarded to Germany or that it was to be used in Sweden for the manufacture of boots for the German army. The owners of the goods stated that the doctrine of continuous voyage would not be applicable unless the goods were on their way to a final enemy destination in the same condition as they were at the time of seizure. This contention was turned down as it was held that raw leather shipped to a neutral country to be manufactured as boots which would be used by the belligerent soldiers would bring the matter within the purview of contraband and as such, the articles were liable to be seized and condemned.

CHAPTER XXVII

TERMINATION OF WAR.

HOW WAR MAY TERMINATE—The termination of hostilities may he brought about by :—

(1) "definite cessation of hostilities on either side,

(2) conquest and complete adsorption of one belligerent state by the other, and

(3) Conclusion of a treaty of peace." (Ptt Cobbett, vol. II).

ARMISTICES AND TRUCES—Armistices and truces are agreements between belligerent forces for a temporary cessation of hostilities. There are three different kinds of armistices

(i) Suspension of arms

(ii) General armistices

(iii) Partial armistices.

The Hague Regulations deal with this topic.

(i) Suspension of arms is cessation of hostilities agreed upon between military and naval forces, large or small, for a short time and regarding momentary and local military purposes only. These purposes may be collection of the wounded, for the burial of the dead, conducting negotiations regarding surrender or evacuation of the defended place.

(ii) A general armistice means a cessation of hostilities agreed upon between belligerents for the whole of their forces and the whole region of war. General armistices are of vital importance affecting the whole theatre of war. They are as a rule concluded for political purposes.

(iii) Partial armistices are agreements not concluded for their whole forces but merely for local military purposes.

WHO CAN CONCLUDE THESE ?—A partial armistice may be concluded by Commanders-in-Chief of the respective forces and ratification is not necessary unless specially stipulated.

A General Armistice can be concluded by belligerent Governments themselves or the commanders-in-chief or diplomatic representatives. Ratification is necessary in this case. Suspension of arms can be ordered by every commander.

General and partial Armistices, are, generally, to be in writing but suspension of arms can be orally concluded.

ARMISTICE OF 1918—In this connection it is of importance to mention a few words about the armistice with Germany concluded on 11th. November 1918. It was definitely provided that there must be immediate cessation of hostilities for 36 days with an option to extend the time. Conditions were laid down which meant virtually surrender of naval and military forces of Germany and military occupation by the allies of strategic position pending the negotiations for peace. An International Armistice Commission

was set up to carry out the executions of its terms. Armistice made on 3rd. November 1918, between the allied and associated powers on the one hand and Austria-Hungary on the other, provided that the entire force of Austria-Hungary was to be demobilised as also all the places occupied by Austria-Hungary, since the beginning of war, must be evacuated.

TREATY OF PEACE—On the conclusion of a treaty of peace, things revert to their original owners, the prisoners of war are released, commercial transactions take place, as they did before the outbreak of war, unless otherwise provided for in the treaty, and diplomatic relations are resumed. With respect to a treaty of peace, it is necessary to bear in mind that it must be ratified by some person or persons authorised under the Municipal Law of the States concerned to do so.

CHAPTER XXVIII

NEUTRALITY.

A neutral state is one which in a war between other states sides with neither party, but continues pacific intercourse with the belligerents. (*See* Dr. Lawrence's definition). It must be remembered that International Law contemplates a relation of peace or war but when war breaks out between two or more states, an ancillary relation, that of neutrality, arises between each of the belligerents and other states taking no part in the war. By virtue of this relation a neutral state is bound to abstain from all interference in the war and to act impartially towards each of the belligerents.

THE FOLLOWING ARE THE DUTIES OF BELLIGERENT STATES TOWARDS NEUTRAL STATES—1 To refrain from hostile operations on neutral territories and on neutral territorial waters.

2 To abstain from making direct preparations and operations for hostile acts on neutral territory or waters. (*See* The *Twee Gebroeders*.) It was laid down in this case that remote uses e. g., procuring of provisions and refreshments are permitted but not proximate acts of war (1800), 3 C. Rob. 162).

3 To obey lawful regulations made by neutral states for the protection of neutrality.

4 To make payment of compensation to neutral states for violation of their territory of waters (See the Dusseldorf (1920) A. C. 1034).

5 To have unmolested as far as practicable submarine cables of neutral powers. (See Higgins' Article in British Year Book 1921-22). The two recent cases viz., the Washington and the Altmark incident which happened during the present war may be mentioned. In the Washington the U. S. A. Government protested against interference with mails to U. S. A. The British Government stated that innocent mails had not been interfered with. In the latter case the question was whether Norway could be held guilty of breach of neutrality, in whose waters the German vessel did some alleged unlawful acts. It was held that Norway was not guilty of breach of duty.

DUTIES OF NEUTRAL STATES TOWARDS BELLIGERENTS—These are (a) Passive and (b) Active.

(a) Passive duties consist of the following.

(1) To acquiesce in the enforcement of their lawful rights against the neutral subjects in the interception of neutral commerce and in the prevention of unneutral service.

(2) Not to grant armed assistance to either belligerents.

(3) Not to grant to one belligerent facilities and privileges which it denies to the other.

(4) Not to give or lend money or to give or sell munitions and instruments of war to either belligerent.

(b) Active Duties include the following:—

(1) To prevent the passage through its territory of a belligerent's troops but not belligerent's wounded.

(2) To prevent the use of its territory for the fitting out and departure of warlike expeditions whether of men or of ships against either belligerent. (See the Alabama (1862) Pitt Cobbett, Vol. II).

(3) To prevent the use of its territory, ports and territorial waters as a base of naval operations.

(4) To prevent the constitution of Prize Courts on its territory. (See the Appam, Pitt Cobbett, Vol. II).

(5) To prevent the unlimited use of its ports by a belligerent for the shelter or custody of its pirates. (See the Appam, Pitt Cobbett, Vol II.)

(6) To prevent its territory from being used as an information station.

(7) To prevent public ships, diplomatic staff and couriers from giving information as to military and naval strength. Let some cases be maintioned.—The case of Twee Gebroeders, illustrates the general immunity of neutral states from actual hostilities. Such territory must not be used by either belligerent as a starting point for any proximate act of war. Neutral territory includes the littoral sea to the extent of 3 miles from the nearest land as well as other waters regarded as territorial by the Law of Nations.

THE CASE OF THE DUSSEL-DORF—The Dussel-Dorf was a German vessel captured in February 1918 by a British ship about 200 yards within the Norwegian territorial waters. The Norwegian Consul-General in London claimed :—

(1) The Delivery of the Dusseldorf and her cargo.

(2) The cost of removing her to Norway; and

(3) An account of profits.

Lord Sterndale before whom the case was argued ordered the release of the ship and the cargo but negatived all the other pleas.

THE CASE OF THE *Valeria*—In this case it was pointed out that when an enemy vessel is captured within territorial waters under a *bona fide* mistake and destroyed on reasonable ground, compensation will not be granted. The Valeria was a German vessel and was captured by a British armed trawler in the belief that she was outside Norwegian waters. Owing to bad weather she was sunk as otherwise she would prove a danger to navigation. It was held that the only wrong which could be vindicated was wrong to the Sovereignty of Norway but neither the King of Norway nor the German owner had any proprietory interest in the vessel or any claim to its value.

THE CASE OF THE GENERAL ARMSTRONG—illustrates the principle that if a belligerent who is attacked in neutral waters elects to defend himself, instead of trusting to neutral protection, he will free the neutral state from any further responsibility, but this does not mean that where an appeal for local protection was either impossible or likely to be ineffectual, a belligerent would be deprived of the right of protection from a neutral state, if it was subsequently available or the right to indemnity or compensation if such right was improperly witheld.

THE CASE OF THE RYESHITELNI—illustrates the principle that where a neutral power has by its persistent infractions of neutrality shown itself unable or unwilling to discharge its neutral obligations and where the injury threatened by some immediate breach is grave and not otherwise remediable, the act of self-redress would be legally admissible. (Cobbett).

THE CASE OF THE DRESDEN—also illustrated this principle.

THE CASE OF THE APPAM—shows that a belligerent is not entitled to bring or send prizes into a neutral port with the intention of adjudicating them. In other words, it would be deemed a gross violation of neutrality if prizes were brought into neutral ports (unless with convoy).

*The 'Appam' (243 U. S. 124). On the 15th. of January 1916 the British ship 'Appam' was captured by the German cruiser 'Moewe'. She was at that time about 1600 miles from Emden, the nearest German port; about 150 miles from Punchello, the nearest available port; 1450 miles from Liverpool, her port of destination and little more than 3000 miles from Hampton Road. She was brought to Hampton Road within the territory of U. S. A.

The American Government protested against the action. The District Federal Court found in favour of the proposition that the German Government had ceased to have any legal claim upon the British ship as soon as she was brought into neutral waters with the intention of making her stay

*Facts From Pitt Cobbett, Vol. II

indefinitely. It was also laid down that a prize vessel could not legally be brought into neutral waters without a convoy. The Supreme Court upheld the decision. Justice Day delivering the judment proceeded as follows—"It is familiar principle in International Law that the usual course after the capture of the 'Appam' would have been to take her to a German port, where a prize court of that nation might have adjudicated her status and if it had so determined condemned the vessel as prize of war." But here the facts were otherwise. The vessel was not taken to a German port nor to the nearest port of a friendly power. It was not also brought within American waters in order to effect essential repairs; it was not also driven by stress of weather to seek the protection of neutral territory for onlya short time.

He also laid it down that on account of unseaworthiness or shortage of fuel or provisions, vessels captured by belligerents could be brought into neutral territory. But on no account could such vessels be brought into neutral waters to be kept there indefinitely. The contention of the German Government that the Appam was a lawful prize and that the German Prize Courts had exclusive jurisdiction to decide, was also negatived, in as much as, the judge laid down that since the vessel was "in an American port and under practice within the jurisdiction of the District Court which had assumed the responsibility to determine the alleged violation of neutral rights with power to dispose of the vessel accordingly."

THE CASE OF THE MANDJUR—illustrates the principle that belligerent vessels in neutral ports could

not usually stay for more than 24 hours. It is based on the need of preventing the use of neutral territory as a refuge of the ships of the belligerent powers.

THE CASE OF THE TEREK—Establishes the principle that belligerent vessels are forbidden to prolong their stay except in cases of grave necessity or owing to stress of weather for more than 24 hours or to take in supplies of provisions or fuel beyond such an amount as might be necessary to carry them to the nearest port of their own country or of an ally.

REPAIRS

WHAT SORT OF REPAIRS SHOULD BE ALLOWED ?

THE CASE OF THE LENA—illustrates the principle that civil repairs are allowoble but not military, and if (military repairs) done, the vessel must be kept in a neutral port, and her crew must be on parole and must not leave the territory of the state.

Repairs which increase the fighting capacity or the efficiency of the ship are not allowed. (Pitt Cobbett Vol. II).

THE CASES OF THE ASKOLD AND THE GROZOVOI These were the two Russian warships which after having been defeated in a naval war (during the Russo. Japanese War) sought refuge in the Chinese port of Shanghai. China was neutral in the war. The repairs were of an extensive character and the Japanese Government demanded that:—

(1) The dismemberment of the vessels should be commenced forthwith.

(2) All arms and ammunitions should be handed over to the Chinese Government.
(3) The Russian flags should be taken down.
(4) No repairs affecting the fighting capacity of the vessels should be permitted.
(5) The vessels so disarmed should be placed under the custody of the Chinese authorities.

HOSTILE EXPEDITIONS—the neutral soil must be completely immune from any act of preparation directed against warring belligerents. There must not be also any use of neutral territory by the belligerents for the purpose of passage of troops. During the Franco-German war in 1870 Switzerland refused to give any passage to the Alsatian conscripts for the French Army.

A neutral power must abstain from making direct preparations for acts of hostility on the neutral territory. In this connection it is of importance to note as to what is meant by warlike expeditions. Lawrence states that when an army is organised or a squadron fitted out in neutral territory, with men, officers, arms, and equipment, it is a warlike expedition. Further, it must be organised with a view to proximate acts of war, though it may not be in a position to commence fighting, the moment it leaves the jurisdiction of neutral waters.

CORPS OF COMBATANTS—Upon this matter the Fifth Hague Conventions lay down that corps of combatants cannot be formed nor recruiting offices opened on the territory of a neutral power to assist the belligerents.

The Hague Convention V of 1907, does not deal with the matter of the Rights and Duties of Neutral States quite comprehensively. But nevertheless it declares some of the important rights and obligations. It affirms that the territory of a neutral Power is inviolable. (Article 1). It forbids a belligerent to move troops or convoys across the territory of a neutral Power. (Article 2). It forbids the installation of wireless telegraphic station within the neutral territory (Article 3). It forbids the opening of recruiting offices within such territory (Article 4).

But it should be borne in mind that a neutral power will not incur any responsibility by reason of persons crossing the frontier singly for the purpose of entering the service of either of the belligerents. (Article 6). It is not bound to prevent the export from, or transit through, its territory on behalf of either belligerent of arms or ammunitions of war or other articles of use to a fleet or army. A neutral Power may give refuge to fugitives provided that they are interned. (Articles 11-13). The sick and the wounded may be allowed to pass through neutral torritory provided that no arms or amunitions are carried.

HAGUE CONVENTION (XIII, 1907)—Any act of hostility, including capture or search, committed by a belligerent warship in neutral waters is regarded as a violation of neutrality and is strictly forbidden (Article 2). When a ship has been captured in neutral waters, the neutral States must employ such means as it has at its disposal to release the prize with its officers and crew and to intern the prize crew. If, however, the

prize does not come within neutral jurisdiction the captor's Government must, on representation by the neutral Power realease both (Article 3).

A belligerent is not allowed to establish a Prize Court within neutral territory (Article 4). A belligerent is forbidden to use neutral port and waters as a base of operation against the enemy.

It should, however, be noted that all restrictions and prohibitions imposed by a neutral state must be applied impartially. Provisions relating to the supply or export of instruments of war, the fitting out, or arming in neutral territory of ships intended for the service of either belligerent and specially the treatment of belligerent warships and prizes in neutral ports are dealt with in Articles 6, 7, 8 and13. The Altmark case already referred to, raised the question, whether the neutrality of a Power would be affected by a passage of warships through its waters. The Altmark, of course, is alleged to have committed some unlawful acts in neutral waters. The facts are not fully known.

CHAPTER XXIX

UNNEUTRAL SERVICE

THE ATLANTA—The Atalanta was a neutral ship which was captured while on a voyage from Batavia to Bremen, and while it touched at a French harbour some despatches were given by the local authorities to be carried to a French Minister. The Captain was aware of the despatches. The ship was captured and the despatches discovered. The British Prize Court decided upon the condemnation of the Ship as also the cargo. In regard to unneutral service it is clear that neutral vessels must not carry despatches from enemy persons or powers which would affect the interests of the belligerent country. Despatches bearing on the operations of war are treated as grave acts prejudicially affecting the interests of the other belligerent. *The Haimun* illustrates the principle that messages and signals bearing on the operations of war must not be transmitted by neutral vessels to either belligerent.

The Quang-Nam lays down the principle that there must not be enlistment in the enemy service in neutral territory.

The Trent affair throws a flood of light upon this topic. It was a British mail steamer which was

sailing from Havana to Nassau carrying mails and passengers. Amongst the passengers were two persons Messrs Mason and Slidell, who had been appointed envoys to Great Britain and France by the South Confederacy, during the American Civil War. An American ship on examination of the cargo and passengers finding the two alleged objectionable passangers took them away to U. S. A. as prisoners. Their immediate release was insisted upon by the British Government. After a protracted correspondence between the two Governments they were released. The U. S. A. Government contended that the two persons were to be treated on the same footing as contraband of war. The British replied that they could not be so treated, in as much as they were being sent out as envoys to neutral powers, and as a neutral power had absolute right to maintain diplomatic and friendly relations with the belligerents, the seizure of the two persons under such circumstances, namely, in capacity as envoys to neutral countries, was unjustified.

Along with this case it should be taken account of the case of the *China*, which was an American mail and passenger carrying ship plying between Shanghai and the American ports. In 1916 on board this ship there were several passengers, Germans, Australians and Turks, who were going to Manilla. A British ship on inspection of the ship removed them. This act gave rise to vehement protests by the Washington Government, who stated that since the persons did not come within Article 47 of the Decla-

ration of London of 1909 which specified that persons belonging to the army and navy could be captured on board the vessels, these passengers must be released. The contention of the British Government was however to the effect that these enemy persons were carrying on subersive activities and were engaged in the smuggling of arms out of Shanghai to help their Governments, and finding that their designs would be detected or had been already detected they were shifting their activities from Shanghai to Manilla. The Washington government however insisted upon their release on the ground that even though engaged in subversive activities, since the persons did not come within the said Article of the Declaration of London they must be set free. The right to remove members of the army or navy of any belligerent state extends according to Mr. Malkin also to reservists. The *Orozembo* lays down the principle that naval or military persons must not be carried on neutral vessels. In regard to the use of wireless telegraphy from neutral territory, Articles 3 and 4 of the Hague Convention V of 1907 prohibits its use on such territory.

By Article 45 of the Declaration of London a neutral vessel is liable to condemnation if she is on a voyage specially undertaken to transport passengers who are in the armed forces of the enemy or for transmission of messages in the interests of the enemy. She will also be likewise condemned if she has got on board a military force or persons, who assist, while on voyage, the operations of the enemy. The goods

belonging to the owner in this case are also to be condemned, but if it is shown that the vessel was in ignorance about the breaking out of the war, or even if aware the master could not get an opportunity of disembarking the obnoxious passengers, the penalties would not be attached. Article 46 lays down that if a neutral vessel participates in the hostilities or is under the orders or control of enemy government or in the service of the enemy government exclusively engaged in the transport of enemy troops, she, as also the goods, are both liable to condemnation.

CHAPTER XXX

THE RIGHT OF VISIT AND OF SEARCH—The case of the Maria (1 C. Rob. page 340) is a leading Case. In this case Lord Stowell held that the right of visit and of search was an inalienable right of every lawfully commissioned cruiser of every belligerent power. If a neutral vessel did not allow such a belligerent ship to exercise the right of visit and of search the result would be the condemnation of the property as also of the ship itself. Along with this it is important to take into consideration the right of convoy. When a neutral merchantship is under convoy a belligerent warship approaches the convoying vessel for ascertaining the nature of the goods as also of the character of the ship. By Articles 61, and 62 of the Declaration of London neutral vessels under the convoy of their warships are exempt from search. The neutral Government assume responsibility for the merchant-vessel not carrying on any contraband, but if the belligerent suspects then, under Article 62, he must make his suspicions known to the commander of the neutral warship and ask for further investigation. The commander of the Convoy alone can make such investigation and an official of the belligerent will be present on such an occasion. If there be any doubt as to whether absolute or conditional contraband is

being carried, the belligerent officer can only enter his protest but if in the opinion of the commander of the convoy, the investigation justified the capture of the ship the convoy must be withdrawn, and the ship must be sent for adjudication to the Prize Court of the belligerent.

The convoy of a warship of another neutral state will not however exempt the merchant vessel from search.

Capture of a vessel takes place when (1) the vessel resists the visit and search, (2) when it is clear as a result of visit and search that the vessel is engaged in an illicit act or that its cargo is liable to be confiscated, (3) when the true character of the ship cannot be determined on account of absence of papers.

Destruction of neutral prizes cannot be allowed unless there are exceptional circumstances, but compensation must in all cases have to be paid with the solitary exception when the neutral ship has by virtue of its incorporation into the service of a belligerent state been definitely stamped with enemy character.

If a neutral vessel cannot be brought in for adjudication, it should be released. A neutral ship however, may be destroyed if she would be liable to condemnation and if the bringing of the ship to a national port is so perilous as may endanger the safety of the warship or the success of the operations in which the warship may be engaged at that time, but if under exceptional circumstances, the vessel is to be destroyed, it is the bounden duty on the part of the belligerent war vessel that enemy person on board the

neutral vessel must be placed in safety and all papers relating to the vessel must be placed on the warship. The better practice, however, is that instead of destroying neutral vessel under those circumstances to release them and this salutory principle was followed during the American Civil War by the naval commanders of the Confederacy.

When a neutral vessel is brought in for adjudication to the Prize Court of the belligerent country and the capture of the vessel or the goods is not given effect to by the Prize Court or if the prize is released without any judgment been given, compensation must be paid unless there are good grounds for the capture of the vessels or the goods. (Article 64 of the Declaration of London.)

APPENDIX I

NEUTRALISED WATERWAYS—Seas, straits and canals can be neutralised if maritime powers agree to refrain from naval hostilities within the said waterways and if also there is no hostility within the waterways by the states at war. Such waterways can better be termed as "internationalised waterways" and include the Bosphorus, the Dardenelles, the Suez, the Kiel and the Panama Canals.

SUEZ CANAL—By the Convention of 1888, known as the (Convention of Constantinople (Oct. 29, 1888) six great European Powers as also Turkey, Spain and the Netherlands who signed the Convention, agreed to the neutral (international) character of the Suez Canal. The Convention lays down that in times of peace and of war the canal will be open to all merchant ships and war-ships of all nations but no acts of hostility are to be committed in the channel itself or in the sea to the distance of three marine miles from either end. The entrances to the Canal cannot be blockaded by any power and no belligerent warship or prizes are permitted to stay in the ports at either end for more than 24 hours and belligerents cannot embark troops or munitions of war within the Canal or its ports.

In 1904 by the Anglo-French Convention the British Government adhered to the Treaty of 1888. By the Treaty of Versailles (Article 152) Germany consented to the transfer to Great Britain of the powers conferred on the Sultan by the Convention of 1888 any by the Treaty of Lausanne (1923), the Suez Canal Convention of 1888 was revived.

THE DARDENELLES AND THE BOSPHORUS—On July 24, 1923 a Straits Convention was signed at Lausanne in which the signatory powers declared the Dardenelles, the Bosphorus and the sea of Marmora open to merchant vessels, warships and aircraft in times of peace and of war. They cannot be blockaded and no hostility can be committed in the waters unless the League of Nations permit the commission of such acts. An international commission has been set up for controlling them. Merchant vessels have been granted full freedom of navigation both in times of peace and war provided that if Turkey is a belligerent, the vessels must not give assistance to the enemy. Warships are also allowed to come and go in times of peace, but in times of war if Turkey is neutral, no hostile act must be committed within the waters. If Turkey is belligerent neutral vessels can pass and repass. To protect Turkey against a possible violation of the conditions of passage the contracting powers have agreed that such violation must not take place and the Council of the League of Nations may call upon the contracting powers to devise measures for the fulfilment of the conditions. The Convention further created demilitarized zones along the shores

where there could be no fortifications or military establishments.

THE KIEL CANAL—Before 1919 the Kiel Canal was a national canal though from 1896-1914 it was thrown open by Germany to all nations; but nevertheless Germany had the right to withdraw the Canal from the use of the nations any time she might choose. But the Treaty of Versailles provided that "The Kiel Canal and its approaches shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of equality." Germany however, is made responsible for the maintenance of good conditions of navigation. The case of *The Wimbledon* decided by the Permanent Court of International Justice has been already referred to.

PANAMA CANAL—By the Hay-Pauncefote Treaty concluded between the United States and Great Britain on 18th Nov. 1901, the Canal was thrown open to vessels of commerce and men-of-war of all nations, on terms of equality, provided that no acts of hostility be committed within the Canal itself by belligerents in time of war and the Canal itself be not used by belligerents for strategic purposes. U. S. A. however, exempted its merchantships from payment of tolls, while insisting upon tolls from British merchant vessels. Britain protested and the dispute was settled in 1914 when it did away with the discriminatory policy. According to Dr. Lawrence the Panama Canal will soon be, if it has not already been neutralised.

APPENDIX II

EGYPT—Egypt was for many centuries a part of the Turkish Empire. After many ups and downs of fortune, on 18th Dec. 1914 Great Britain declared a British Protectorate over Egypt. By the Treaties of Peace of 1919, i. e., Treaty of Verseilles (Article 147), Treaty of St. Germain (Article 102), Treaty of Trianon (Article 86) the British Protectorate was recognised by all the enemy states in the last World War except Turkey. In March 1922 Viscount Allenby, on behalf of the British Government, announced that the British Protectorate of Egypt has terminated and Egypt was declared a Sovereign and independent state, subject to certain reservations which the British Government retained in their own hands, namely, the security of communications of the British Empire in Egypt, the defence of Egypt against foreign invasion and foreign interference, the protection of foreign interests as also the protection of minorities. On 15th. March, 1922 the Sultan took the title of the King of Egypt. The Treaty signed at Lausanne in 1923 between Turkey and the allied Powers confirmed this position of Egypt.

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APPENDIX III

DOCTRINE OF EXTRA-TERRITORIALITY—The doctrine of extra-territoriality means that certain persons, and things are to be treated in international law as beyond the territory of the state, though situated there, and are treated as within the jurisdiction of some other state. Sovereigns when they reside or travel in foreign countries, ambassadors, their suite, and their residences in the countries to which they are accredited, public vessels in a foreign port, armed forces of a state in a foreign country, foreigners of European or American descent in certain eastern states all enjoy extra-territorial privileges.

The status of war-ships has been definitely determined in the "Exchange v. Mcfaddon (1812, 7 Cranch, 116), while in the "Parlement Belge" (1880, L. R. 6 P. D. 197), the status of public vessels other than ships of war has been laid down. In the 'Sitka' the extent of the territorial jurisdiction of the state of persons on board the public vessels has been promulgated.

In the "Exchange v. Mcfaddon", Marshall C. J. stated that a public armed ship constituted a part of the military force of the state. Such a ship acted under the direct command of the Sovereign. She could not therefore be interfered with without affecting the

Sovereign's power and dignity. Warships, therefore, entering the ports of a foreign Power were to be considered exempt from its jurisdiction.

In the case of "the Parlement Belge", which was a public vessel belonging to the King of Belgium it was laid down that the Court had no power to proceed against a ship which was the property of a foreign Sovereign and was in his possession, notwithstanding the fact that it was not a warship. The Belgian King had declared the vessel to be in his possession, and a public vessel of the state, and the Court could not examine the correctness of this declaration.

In the case of the "Sitka" these principles were reiterated. The ship in question was regarded as a part of the territory of the Sovereign of the State to which she belonged. It was decided that the State, through which public vessels passed or into which they entered, had no control over persons on board such vessels.

The definition of a public vessel has been given by Pitt Cobbett. "A public vessel is one owned and commissioned by the Government of a Sovereign State; or.....by the Government of a semi-Sovereign State.....In the category of public vessels are included not only ships of war but also unarmed Government vessels, store-ships, and transports. A subordinate or partial use of a public vessel for trading purposes... will not disentitle her to the privileges of a public vessel."*

See in this connecion the case of the *Christina*, which laid down the same principles.

ASYLUM ON PUBLIC VESSELS—Ordinary criminals must not be given asylum. In regard to political offenders they may be received on such vessels provided that the captain of the ship takes care that such refugees do not correspond with their political adherents on shore on political matters and that they should be sent to some place of safety at the earliest possible opportunity. (This was a substance of Lord Palmerston's official communication to the Admiralty). In times of Civil War or insurrection, political offenders, when they reach such ships, may be given shelter provided that they are "kept innoxious while on board."

IN REGARD TO SOVEREIGNS

Mighell v. Sultan of Johore (1894 1 Q. B. 149) is the leading case. The facts of the case briefly stated are as follows:—The Sultan introduced himself as one Albert Baker, a private individual and subject of the Queen of England to the plaintiff, a lady, and promised to marry her. Later on he refused. Thereupon, a suit for breach of promise of marriage was instituted against him. It was held that the Court had no jurisdiction over the defendant who was an independent foreign sovereign, unless he submitted to the jurisdiction of the Court. The fact that he was courting the lady under an assumed name and made the promise of marriage in that name did not show that he submitted to the jurisdiction of the Court. (See also Duff Development Co. v. The Government of Kelanton, (1924 A. C. 797).

As regards the privileges of the ambassadors, they have already been commented upon in the Chapter on 'Diplomatic Agents'.

CONSULAR COURTS

In regard to Europeans and Americans when residing in certain Eastern states, it may be stated that in Turkey Egypt, Japan, Persia, Siam, and China, these communities were regarded as beyond the jurisdiction of these states. ıes Treaties to this effect were entered into by the powers of these states. The result was the establishment of extra-territorial communities consisting of persons who while resident in the territory of the local power, are yet deemed for the purposes of civil and criminal jurisdiction, to be outside its borders. They are under the law of the country to which they belong even when residing in such countries, and such national law is administered to them by the Consuls of their own Government. This system however, has come to an end in Japan, Turkey, Siam and Persia.

RECAPTURE AND SALVAGE

Sections 40 and 41 of the Naval Prize Act of 1864 lay down that any ship or goods which belong to British subjects and are captured by the enemy, shall be restored by the decree of the Prize Court to the owner, if one eighth of the value of the ship or the goods be given by the former owner to the Captor. The Court will take into consideration all the facts and circumstances in awarding the amount of salvage which may be increased even to one fourth of their

value. But if the ship was used by the enemy as war-ship or as a ship in the Naval service of the enemy, no compensation is to be paid. Again if the ship was engaged in an unlawful trade before her capture no payment need be made.

Salvage means reward given for recapturing property at sea and restoring it to the rightful owners. A certain proportion of the value of the recaptured property is to be given to the captors. The amount of salvage however differs in the various states. In England the usual rate is one eight, in Franbe one tenth, in Spain one eight if effected by a warship and in other cases one tenth. In the limited states it is one eight, in Denmark one-third and Sweden one-half.

It should be borne in mined that Salvage is not awarded by British Prize Courts or the recapture of neutral ships and goods, unless there was the imminent risk of condemnation. (The Pontoporos).

RULE OF WAR OF 1756

By the Rule of war (1756), it was promulgated that trade and commeree which are not open to a country in time of peace, cannot be resorted to in time of war by that country. During the War between England and France, France found that she could not protect her goods, nor could find an outlet for them, because of British measures directed against her goods. She thereupon allowed Dutch ships to carry on the trade between France and the French colonies. Thereupon the British Government held that carrying on such a trade must be deemed illegal,

for France had not thrown open the trade between her and her colonies to Holland in time of peace. Therefore throwing open such a trade in time of war between England and France to Holland only stamp such trade with hostile character. It should be borne in mind in this connection that France had confined the trade between her and her colonies to French nationals and to French vessels in times of peace.

This doctrine was further extended in 1793 by England which is known as Rule of 1793 by virtue of which, if a belligerent power throws open such trade to all the neutrals even then it would be regarded as unlawful. The right of neutrals to engage in such a trade has not yet been finally settled and is to be regarded as an open question.

The doctrine of continuous voyage is applicable to such trade. The case of the *William* (1806) is in point. In the case of the *Proton*, it was declared that carrying on of such a trade was equivalent to carrying on of contraband. *See* also the case of the *Immanuel*.

RULES OF WASHINGTON OF 1871.

Regarding neutrality there are the three principles of what is known as the Treaty of Washington of 1871. As a result of the arbitration in the famous Alabama case during the American Civil War, when U. S. A. Government charged the British Government with having violated the laws of neutrality, the following propositions were laid down:

A neutral government is bound, (1) To use due diligence to prevent the fitting out of army or equipping

within its jurisdiction any vessel, which it has reasonable ground to believe, is intended to cruise or carry on war against a Power with which it is at peace, and also to use the like diligence to prevent departure from its jurisdiction of any vessel intended to cruise or carry on war, such vessel having been specially adapted in whole or in part within such jurisdiction, to warlike use.

(2) Not to permit or suffer either belligerent to make use of its ports or waters as a base of naval operations against the other or for the purpose of renewal or augmentation of military supplies or arms or re-armament of men.

(3) To exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction to prevent any violation of the foregoing obligations and duties.

Great Britain stated that these principles could not be said to represent correctly the principles and usages hitherto enforced or practised; but accepted them in order to terminate the dispute arising between two countries.

APPENDIX IV

PIRACY—Pirates are persons who attack by sea without any authority from any state. Generally piracy is confined to acts of depredation by sea. No state takes any responsibility for the piratical offences in asmuchas if the State does take the responsibility then the acts cease to be piratical and reparation has got to be granted to the Government injured through such acts. A pirate is one who generally is driven by motives of gain or vengeance to commit robbery or murder on sea.* According to Professor Hall, piracy cannot take place independently of the sea, under conditions at least of modern civilization but a pirate does not lose his piratical character by landing within state territory, so that piratical acts done on shore do not cease to be piratical. He is of opinion that piracy is not merely confided to unauthorised acts of violence upon the sea but also any such acts committed on unappropriated lands or within territory of a state by descent from the sea by a band of persons who act in an unauthorised way that is for whose acts no state will assume responsibility. He classifies piratical acts as follows:—

*Piracy has been defined by Wheaton as depredation on the seas without being authorised by any Sovereign State, or with commission from different sovereigns at war with each other.

(1) Robbery or attempt at robbery of a vessel.

(2) Depredation upon the two belligerents at war with one another.

(3) Depredations committed at sea upon the public or private vessels of a state.

Since the pirates are regarded as enemies of mankind, every state is entitled to capture such vessels and punish pirates. Nationality of the pirates or the question of ownership of such vessels would not deter the courts of any country from assuming jurisdiction over such persons and vessels.

A state may disclaim responsibility for any action done by a vessel flying its own flag by intimating to the other powers that for the future acts of the vessel concerned the state whose flag the ship might be flying must be free from all responsibility. Such a ship then would become a piratical vessel.

A community that has received recognition of belligerency can authorise its ships to intercept the trade and commerce of its opponent, for which that community must assume full responsibility. But if that political community has failed to be successful "and ceases to exist as a separate political unit its commissions are no longer valid and acts done under cover of them become piratical because thay are unauthorised." This point is illustrated in the case of the *Shenandoah* at the close of the American Civil War.

It should be remembered that each state can by a state law make punishable offences as piracy which tested according to the strict canons of International

Law would not be piracy; but when a state does promulgate such a provision in its criminal court it is binding upon its courts. Unless however there is an agreement among states, no state having such a provision in the law can make it binding upon the subjects of other states when they have committed such offences outside the limits of the state concerned.*

In the case of the *Ambrose Light*, which was a vessel commissioned by Columbian insurgents seized by an American cruiser and brought to New York for adjudication, it was held by the court that there must be recognition "by at least some established Government of a state of war or of the belligerent rights of insurgents to prevent their cruisers from being held legally piratical by the courts of other nations injuriously affected." The scope of piracy is uncertain, so the Harvard Draft on piracy does not accept the definition of piracy as put forward generally in International Law, namely that it is an offence against the law of nations, but maintains that it is "the basis of an extraordinary jurisdiction in every state of bringing to trial individuals and seize

*The case of *Lelois*, which was a French vesse capsured by a British cruiser and brought in for adjudication to the Court of Admiralty for engaging in slave trade, which had been prohibited in England. Lord Stowell stated that the right of visit and search could not be exercised in time of peace upon vessels of another country. Furthermore, to make it piracy or a crime by the Law of Nations it must have been so considered and treated in practice by all civilised states and made so by virtue of a general conventi on, (Wheaton).

their goods and other property for such offences which are committed outside the territory, and ordinary jurisdiction of the state, "that brings to book such an offender. Time alone will reveal how far the Harvard Draft commends itself to acceptance to the states. (The leading cases on piracy are: The *Huascar*, the *Virginius*, the *Shenondoah*, the *Lelois* the *Fortuna*, the *Diana*, the *Antelope*, the *Madrazo v. Willies*.

STATES JURISDICTION OVER PERSONS FOR OFFENCES COMMITTED ABROAD.

*A state has jurisdiction over foreigners for offences committed abroad. Certain states, for example, France, Austria and Germany hold that they are entitled to punish foreigners who have committed crimes against the safety of the State. Certain other states, for example, mainly Russia and Italy, make the above mentioned offence not merely criminal but also have included such crimes e. g., murder, forgery and arson, even when they are committed by foreign nationals upon foreign territory. When such persons come within the territorial limits of this state they can be so tried. This is indeed the assumption of an extraordinary jurisdiction over non-nationals for offences committed not upon the soil of the country which tries them but upon the territory of some other state. Therefore Hall, Westlake and other eminent publicists have questioned the propriety of the right of jurisdiction in such cases.

* Read this topic along with "The Jurisdiction of the States," Chapter.

The Institute of International Law in 1883 voted in favour of a right of jurisdiction over foreigners for acts done beyond the territorial limits of the state concerned, if and when such foreigners upon foreign soil have done acts that are prejudicial to the "security and social order of the state that punishes them and are not liable to punishment by the law of the country where they took place." Thus subject to these limitations no state seems to have any jurisdiction over foreigners for offences committed abroad. The Government of Washington took this view in the famous *Cutting* Case.

With regard to a state having its territorial jurisdiction over its nationals the *Earl Russell's* case (1901 A. C. 446,) is a case in point. Undoubtedly every state can exercise jurisdiction beyond the limits of its territory over its own nationals with respect of offences that are regarded as such under the state law. *Earl Russell* was charged with having committed bigamy beyond England for having married in the United States Miss Cook. On his arrival in England he was arrested and put on trial and convicted and sentenced to six months' imprisonment. Other offences for which the British court can assume jurisdiction are treason, murder, offences under Section 4 of the Foreign Enlistment Act 1870, etc.

APPENDIX V

AGENTS OF WARFARE

GUERILLA TROOPS—They are bands not belonging to a regular army and not under strict military discipline but all the same participating in the warfare actively and devoting themselves continuously to warlike avocations (See Lawrence, *International Law*). The rules regulating such troops are :—

(1) They must be commanded by a responsible person.

(2) They must have on their persons distinctive badges.

(3) They must carry arms openly.

(4) They must obey the laws and regulations of war as laid down by civilized states.

The underlying principle is that they must not engage themselves in warfare as irresponsible agents of destruction nor must they be able to attack the belligerent armies by springing surprise upon them. The belligerents must know what they are, otherwise they would not be entitled to the privileges of combatants.

(Some of the topics on this head were omitted from the book. They are given below in the Appendix.)

LEVIES EN MASSE—If and when the whole manhood of a country is called by its Government and drafted into its army, it is called *Levee en Masse.* Sometimes it so happens that the whole population rises up spontaneously in arms against an enemy who is fast approaching their country. This is called alsoe *levy en masse* It is incumbent, however, that in order to get the privileges of combatants they must carry on warfare according to the civilised methods and must have at the head some responsible person. They must carry arms openly

IMPERFECTLY CIVILISED TROOPS—Sometimes civilised states object to the use of savage and barbarous troops in the ranks of combatants. It is however clear now that such troops may be used in the battlefield if they are amenable to military discipline, observe civilised methods of warfare, and are under the command of officers, who belong to civilised states. Dr. Lawrence thinks that it would be humane to reserve them for use against border tribes, and in warfare with people of the same degree of civilisation as themselves.

VOLUNTEER NAVY—Germany was the first country to use it during the Franco-Prussian War of 1870. What was done by Germany was that Volunteer Navy was to carry the German flag, and was to be under German naval command. The officers serving on such navy received commissions from the state on a temporary basis, and the crew also was made to belong temporarily to the service of the State. By the expression "temporary" here, of course is

meant, during the continuance of the war. volunteer Navy is not illegal, and if it conducts itself under the command, supervision and management of the State which must be responsible for the observance of the civilised methods of warfare on the part of the Volunteer navy, then no blame can be attached to such navy. In the words of Dr. Lawrence, "The legality of a volunteer navy must depend upon the closeness of its connection with the state, and the securities it affords for a due observance of the laws of war."

SUBMARINE MINES—By the Hague Convention of 1907 it was laid down that the use of unanchored automatic contact mines is forbidden unless such mines are so constructed as to become harmless one hour at most after the person who laid them had ceased to control them. Unanchored contact mines are permitted if and when they are so constructed as to have become harmless as soon as they have broken loose from the moorings. It is further laid down that the a laying of automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial shipping is forbidden.

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INDEX